

# **Exhibit 62**

1 UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 In re:

4 SEARS HOLDINGS CORPORATION, et al.,  
Debtor.

5  
6 Chapter 11  
Case No. 18-23538 (RDD)

7  
8 -----x

\*\*\*HIGHLY CONFIDENTIAL\*\*\*

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11 30 (b) (6) DEPOSITION OF LAZARD FRERES  
BY ITS CORPORATE REPRESENTATIVE  
12 BRANDON AEBERSOLD  
13 NEW YORK, NEW YORK  
Thursday, January 31, 2019

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21 Reported by:  
22 MARK RICHMAN, CSR, RPR, CM  
23 JOB NO: 154924  
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Page 3

New York, New York  
Thursday, January 31, 2019

30(b)(6) DEPOSITION of Lazard Freres by  
its Corporate Representative BRANDON AEBERSOLD,  
held at the offices of Akin Gump Strauss Hauer  
& Feld LLP, One Bryant Park, New York, New  
York, before MARK RICHMAN, a Certified  
Shorthand Reporter, Registered Professional  
Reporter and Notary Public of the State of New  
York

APPEARANCES:

AKIN GUMP STRAUSS HAUER & FELD  
Attorneys for Unsecured Creditors  
One Bryant Park  
Bank of America Tower  
New York, New York 10036  
BY: JOSEPH SORKIN, ESQ.  
PHILIP DUBLIN, ESQ.  
JOHN KANE, ESQ.

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A P P E A R A N C E S (Continued):  
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and Debtors-in-Possession: Sears Holdings  
Corporation, et al.  
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BY: JARED FRIEDMANN, ESQ.

A P P E A R A N C E S (Continued):  
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BY: JONATHAN HURWITZ, ESQ.

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<p>1 A P P E A R A N C E S (Continued):</p> <p>2</p> <p>3 CLEARY GOTTlieb STEEN &amp; HAMILTON</p> <p>4 Attorneys for ESL Investments Inc.</p> <p>5 and the Witness</p> <p>6 One Liberty Plaza</p> <p>7 New York, New York 10006</p> <p>8 BY: ANDREW WEAVER, ESQ.</p> <p>9 JACK WHITELEY, ESQ.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 PRESENT:</p> <p>16 MATTHEW DIAZ, FTI</p> <p>17 THOMAS HEDUS, HOULIHAN LOKEY</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 BRANDON AEBERSOLD, called as a</p> <p>3 witness, having been first duly sworn</p> <p>4 by the Notary Public (Mark Richman),</p> <p>5 was examined and testified as</p> <p>6 follows:</p> <p>7 EXAMINATION BY MR. SORKIN:</p> <p>8 Q. Good morning, Mr. Aebersold. My</p> <p>9 name is Joseph Sorkin at Akin Gump and</p> <p>10 we represent the Creditors' Committee</p> <p>11 here in Sears. I know you've been</p> <p>12 deposed before so I'm not going to go</p> <p>13 through all the ground rules. I would</p> <p>14 just ask that if there is a question</p> <p>15 that I ask that you don't understand,</p> <p>16 that you let me know and I will try and</p> <p>17 ask it again or rephrase it. Is that</p> <p>18 okay?</p> <p>19 A. Sure.</p> <p>20 Q. If you need a break at any point</p> <p>21 just let me know and as long as there's</p> <p>22 not a question pending, happy to</p> <p>23 accommodate you.</p> <p>24 Mr. Aebersold, why don't we start</p> <p>25 with, I'm going to hand you what was</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 previously marked as UCC Exhibit 40.</p> <p>3 (Exhibit 40, previously marked</p> <p>4 and shown to witness.)</p> <p>5 Q. If you could take just a minute</p> <p>6 to review that document.</p> <p>7 A. Okay.</p> <p>8 Q. Have you had a chance to review</p> <p>9 that?</p> <p>10 A. Yes, I have.</p> <p>11 Q. And, Mr. Aebersold, do you</p> <p>12 understand that you are here providing</p> <p>13 testimony both in your individual</p> <p>14 capacity, in other words based on the</p> <p>15 information you know and understand, as</p> <p>16 well as a corporate representative on</p> <p>17 certain topics?</p> <p>18 A. I do.</p> <p>19 Q. And what I've handed you as UCC's</p> <p>20 exhibit 40 identifies 3 larger</p> <p>21 categories in items 1, 2 and 3 on the</p> <p>22 email for which you were designated as</p> <p>23 the corporate representative under</p> <p>24 federal Rule 30(B)(6). Do you see that?</p> <p>25 A. Yes.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. And are you prepared to provide</p> <p>3 testimony on those three areas today?</p> <p>4 A. I am.</p> <p>5 Q. Can you tell me, other than</p> <p>6 meeting with counsel, what you did to</p> <p>7 prepare to be in a position to testify</p> <p>8 about the three topics where your name</p> <p>9 is listed on exhibit 40?</p> <p>10 A. Other than talking with counsel?</p> <p>11 Q. Other than talking with counsel.</p> <p>12 A. I reviewed a couple of</p> <p>13 presentations.</p> <p>14 Q. Did your review of those</p> <p>15 presentations refresh your recollection</p> <p>16 about any facts in this case?</p> <p>17 A. More so with respect to timing.</p> <p>18 Q. With respect to timing, what was</p> <p>19 the timing that you understand those</p> <p>20 presentations were made during or</p> <p>21 prepared during?</p> <p>22 A. Sure. When we met with the</p> <p>23 restructuring committee when the auction</p> <p>24 actually occurred.</p> <p>25 Q. So this would have been during</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 the January 14th through 17th time</p> <p>3 period?</p> <p>4 A. That would be included. I would</p> <p>5 also include the week prior.</p> <p>6 Q. What were the presentations</p> <p>7 about?</p> <p>8 A. Which presentations?</p> <p>9 Q. That you reviewed that refreshed</p> <p>10 your recollection about the timing</p> <p>11 associated with the auction?</p> <p>12 A. They were presentations made to</p> <p>13 the restructuring committee.</p> <p>14 Q. Were those presentations that you</p> <p>15 or Lazard had prepared?</p> <p>16 A. Parts of them.</p> <p>17 Q. Who else had been involved in</p> <p>18 preparing those presentations?</p> <p>19 A. M-III, Weil Gotshal, debtors'</p> <p>20 management.</p> <p>21 Q. Do you recall generally the</p> <p>22 subject matter of those presentations?</p> <p>23 A. Not specifically.</p> <p>24 Q. Other than reviewing documents</p> <p>25 and meeting with counsel, did you speak</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 to anyone outside the presence of</p> <p>3 counsel in order to prepare yourself to</p> <p>4 provide testimony today?</p> <p>5 A. No.</p> <p>6 Q. Did you review any deposition</p> <p>7 transcripts of anyone who's already been</p> <p>8 deposed in the Sears matter?</p> <p>9 A. I did not.</p> <p>10 Q. Did you review any auction</p> <p>11 transcripts in preparation for today?</p> <p>12 A. I did not.</p> <p>13 Q. Have you reviewed any auction</p> <p>14 transcripts at all in this case?</p> <p>15 MR. FRIEDMANN: Object to form.</p> <p>16 A. I don't believe so.</p> <p>17 Q. Prior to Lazard's engagement in</p> <p>18 the Sears matter, and I understand that</p> <p>19 Lazard was engaged prepetition on a</p> <p>20 couple of assignments, but prior to</p> <p>21 those assignments or the engagement that</p> <p>22 led to the filing, did you personally</p> <p>23 have any interaction with Mr. Lampert?</p> <p>24 MR. WEAVER: Objection to form.</p> <p>25 A. Are you talking about the prior</p>
Page 12	Page 13
<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 engagement or -- I missed the part about</p> <p>3 before that led to filing.</p> <p>4 Q. Sure, why don't we just take this</p> <p>5 in stages?</p> <p>6 A. Sure.</p> <p>7 Q. Can you tell me the first time</p> <p>8 that Lazard was engaged by Sears in any</p> <p>9 capacity?</p> <p>10 A. I can't recall specific, but the</p> <p>11 general time frame was around early</p> <p>12 February of 2018.</p> <p>13 Q. Were you involved in that</p> <p>14 engagement?</p> <p>15 A. Yes, I was.</p> <p>16 Q. What was the purpose of that</p> <p>17 engagement as far as you understood?</p> <p>18 A. The purpose was to advise and</p> <p>19 help implement an out of court exchange</p> <p>20 offer.</p> <p>21 Q. And who contacted Lazard, to the</p> <p>22 extent you know, with respect to that</p> <p>23 engagement?</p> <p>24 A. I can't recall.</p> <p>25 Q. Prior to -- were you involved</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 personally in the roughly February '18</p> <p>3 time frame engagement with Sears?</p> <p>4 A. Yes, I was.</p> <p>5 Q. Prior to that engagement, had you</p> <p>6 personally had any involvement with Mr.</p> <p>7 Lampert or ESL?</p> <p>8 A. No.</p> <p>9 Q. Prior to that engagement, do you</p> <p>10 know whether Lazard had previously had</p> <p>11 any engagement with Mr. Lampert or ESL?</p> <p>12 MR. FRIEDMANN: Object to form.</p> <p>13 MR. WEAVER: Objection to form.</p> <p>14 A. I don't believe so, but I can't</p> <p>15 be sure.</p> <p>16 Q. Understood. I was just asking to</p> <p>17 the best of your knowledge.</p> <p>18 A. Understood.</p> <p>19 Q. After the early February '18 time</p> <p>20 period engagement between Lazard and</p> <p>21 Sears, or of Lazard by Sears, can you</p> <p>22 tell me when the next engagement was</p> <p>23 between Lazard and Sears?</p> <p>24 A. I wouldn't be able to recall with</p> <p>25 specifics, but that prior engagement</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 terminated under the terms of that</p> <p>3 engagement letter some time in early to</p> <p>4 mid-spring, and then we were reengaged</p> <p>5 some time in early October. I</p> <p>6 apologize, I can't recall the specifics.</p> <p>7 Q. Understood. And the early</p> <p>8 October engagement was the engagement</p> <p>9 that led to the bankruptcy filing and is</p> <p>10 the engagement you're working under now,</p> <p>11 correct?</p> <p>12 A. I wouldn't say our engagement led</p> <p>13 to the --</p> <p>14 Q. Fair enough. Understood.</p> <p>15 A. -- filing of a bankruptcy. But</p> <p>16 subsequent to our engagement, a</p> <p>17 bankruptcy did occur.</p> <p>18 Q. Understood. And that is the</p> <p>19 engagement you're currently operating</p> <p>20 under, correct?</p> <p>21 A. Generally speaking, yes, as</p> <p>22 amended.</p> <p>23 Q. We will go through, I understand</p> <p>24 the engagement was amended I believe in</p> <p>25 December of 2018 as approved by the</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 court. We will talk about that in a</p> <p>3 little bit.</p> <p>4 What I want to start talking about</p> <p>5 is just understanding, let's focus on</p> <p>6 the auction. So when I say the auction</p> <p>7 here, do you understand that I'm talking</p> <p>8 about the auction of substantially all</p> <p>9 of Sears's assets that occurred between</p> <p>10 January 14th and I believe ultimately</p> <p>11 closed in the early morning hours of</p> <p>12 January 17th?</p> <p>13 A. Yes.</p> <p>14 Q. Were you present at Weil, the</p> <p>15 offices of Weil Gotshal, Sears's</p> <p>16 counsel, during that auction?</p> <p>17 A. Yes. I did go home to sleep</p> <p>18 previously for a couple of times, but</p> <p>19 generally I was there.</p> <p>20 Q. Generally during that time</p> <p>21 period?</p> <p>22 A. Yes.</p> <p>23 Q. Maybe not during the entire time</p> <p>24 period, but you participated and were</p> <p>25 present during the auction?</p>
Page 16	Page 17
<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. For most of it.</p> <p>3 Q. What was your role during the</p> <p>4 auction process as far as you understood</p> <p>5 it in terms of advising Sears?</p> <p>6 A. I participated in negotiations,</p> <p>7 had conversations with certain bidders,</p> <p>8 was answering questions and advising the</p> <p>9 restructuring committee, and speaking</p> <p>10 with the other present parties,</p> <p>11 generally.</p> <p>12 Q. In terms of negotiations, who was</p> <p>13 it that was negotiating on behalf of the</p> <p>14 debtors with ESL and their advisors?</p> <p>15 A. I would say it was a combination</p> <p>16 between Lazard, M-III, Weil Gotshal, at</p> <p>17 times debtors' management, as well as</p> <p>18 the advisors to the restructuring</p> <p>19 subcommittee.</p> <p>20 Q. Was there any particular part of</p> <p>21 the negotiations that you or Lazard</p> <p>22 primarily had responsibility for?</p> <p>23 MR. FRIEDMANN: Object to form.</p> <p>24 A. That's hard to answer, to say</p> <p>25 that we had specific responsibility. We</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 were never specifically tasked with a</p> <p>3 specific component of the overall</p> <p>4 transaction. So I can't really answer.</p> <p>5 Q. Understanding that there maybe</p> <p>6 wasn't a specific task, did it turn out</p> <p>7 that primary responsibility for any</p> <p>8 particular aspect of the negotiations</p> <p>9 fell to you or Lazard? For example,</p> <p>10 negotiating the terms of the APA or</p> <p>11 negotiating the economic terms with ESL</p> <p>12 or negotiating additional consideration</p> <p>13 for encumbered assets? Like is there</p> <p>14 any category that you recall ended up</p> <p>15 sort of falling to you or Lazard in</p> <p>16 terms of primary responsibilities?</p> <p>17 MR. FRIEDMANN: Object to form.</p> <p>18 A. No, I can't think of an instance</p> <p>19 where it wasn't a group effort among the</p> <p>20 advisors.</p> <p>21 Q. Got it. Let me kind of take then</p> <p>22 a step back from the auction and start</p> <p>23 with, you recall that the definitive bid</p> <p>24 deadline that was established under the</p> <p>25 global bid procedures order was December</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 28th, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And on December 28th, ESL</p> <p>5 submitted a bid to the debtors, correct?</p> <p>6 A. Correct.</p> <p>7 Q. So that you're not guessing, let</p> <p>8 me go ahead and provide you a copy of</p> <p>9 what I understand to be the bid letter.</p> <p>10 I believe it was previously marked as</p> <p>11 exhibit 2.</p> <p>12 (Exhibit 2, previously marked and</p> <p>13 shown to witness.)</p> <p>14 Q. Mr. Aebersold, if you could just</p> <p>15 take a moment to look at UCC Exhibit 2</p> <p>16 and tell me if you understand this</p> <p>17 document to be the bid that the company</p> <p>18 received from ESL -- oh, excuse me, I</p> <p>19 gave you -- yes, that's right. That the</p> <p>20 company received from ESL on December</p> <p>21 28th in connection with the definitive</p> <p>22 bid deadline?</p> <p>23 A. Yes, this appears to be the bid</p> <p>24 letter that we received.</p> <p>25 Q. And if you look at -- let me step</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 back for just a minute. I realize I've</p> <p>3 used a couple of terms somewhat</p> <p>4 interchangeably and I just want to make</p> <p>5 sure you and I understand each other.</p> <p>6 If I refer to the company, the debtors,</p> <p>7 or Sears, I'm intending to refer to the</p> <p>8 debtors and the affiliated debtors in</p> <p>9 this case, Sears Holdings.</p> <p>10 Do you understand that and can we</p> <p>11 have the agreement that if I'm referring</p> <p>12 to debtors, the company, or Sears,</p> <p>13 that's who I'm referring to?</p> <p>14 A. Yes.</p> <p>15 Q. If we are talking about a</p> <p>16 go-forward Sears, I will likely refer to</p> <p>17 that as Newco. Do you understand that?</p> <p>18 A. Yes.</p> <p>19 Q. And if at any point you don't</p> <p>20 understand which entity I'm referring</p> <p>21 to, just let me know and I will clarify.</p> <p>22 Okay?</p> <p>23 A. Sure.</p> <p>24 Q. If you can look at page 2 of</p> <p>25 exhibit 2 you'll see under item number 2</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 there's a list of Consideration: Other</p> <p>3 Value. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Was your understanding that the</p> <p>6 items identified in 2 a through f were</p> <p>7 the value or the consideration that was</p> <p>8 being provided by ESL in connection with</p> <p>9 the bid received on December 28th?</p> <p>10 A. I would say it is what ESL listed</p> <p>11 as their consideration.</p> <p>12 Q. Did at any time, did you or</p> <p>13 anyone, any advisor of the debtors that</p> <p>14 you're aware of allocate the</p> <p>15 consideration, the value of the</p> <p>16 consideration provided in exhibit 2 to</p> <p>17 specific assets that ESL was seeking to</p> <p>18 acquire?</p> <p>19 A. Your question is did who</p> <p>20 allocate?</p> <p>21 Q. Did you or anyone at the debtors</p> <p>22 that you know of ever attempt to</p> <p>23 allocate value or assign value to the</p> <p>24 particular sort of buckets of</p> <p>25 consideration identified in exhibit 2?</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 MR. FRIEDMANN: Object to form.</p> <p>3 A. I can't recall.</p> <p>4 Q. At any time with respect to</p> <p>5 whether it was any of the bids that led</p> <p>6 up to the bid that has been accepted by</p> <p>7 the debtors subject to Court approval,</p> <p>8 are you aware of any effort to allocate</p> <p>9 value specifically to assets that are</p> <p>10 being acquired by ESL?</p> <p>11 MR. WEAVER: Objection to form.</p> <p>12 A. I can't recall.</p> <p>13 Q. Have you seen a document -- and</p> <p>14 when I say allocate value, does that</p> <p>15 make sense to you?</p> <p>16 A. Generally, sure.</p> <p>17 Q. So that what I'm asking is, to</p> <p>18 the extent ESL is providing a particular</p> <p>19 form of consideration, for example,</p> <p>20 credit bidding a particular loan</p> <p>21 facility that the value assigned to that</p> <p>22 loan facility is specifically assigned</p> <p>23 to particular assets being acquired in</p> <p>24 connection with the sale, does that make</p> <p>25 sense?</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. Your definition makes sense.</p> <p>3 Q. At any point have you seen a</p> <p>4 document that sets forth the specific</p> <p>5 consideration being provided by ESL in</p> <p>6 connection with the proposed sale and</p> <p>7 the assets being acquired or proposed to</p> <p>8 be acquired by ESL?</p> <p>9 MR. WEAVER: Objection to form.</p> <p>10 A. Under your definition of</p> <p>11 allocation, I don't believe that I have.</p> <p>12 Q. Under any definition of</p> <p>13 allocation, have you seen a document</p> <p>14 that attempts to assign value or line up</p> <p>15 consideration with the assets?</p> <p>16 MR. FRIEDMANN: Object to form.</p> <p>17 A. I can't recall a document that</p> <p>18 lined up form of consideration with</p> <p>19 assets.</p> <p>20 Q. Going back to exhibit 2, do you</p> <p>21 remember what your reaction was to the</p> <p>22 bid included in exhibit 2?</p> <p>23 A. I can't recall specifically, I'm</p> <p>24 sorry.</p> <p>25 Q. Do you remember ultimately</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 whether you provided any advice to the</p> <p>3 restructuring committee or the</p> <p>4 restructuring subcommittee with respect</p> <p>5 to whether or not to qualify the bid</p> <p>6 contained in exhibit 2 under the terms</p> <p>7 of the global bid procedures order?</p> <p>8 MR. FRIEDMANN: I just want to</p> <p>9 instruct the witness that in</p> <p>10 answering this question, to the</p> <p>11 extent that any advice you provided</p> <p>12 to the restructuring committee</p> <p>13 regarding qualifying the bid was</p> <p>14 informed by discussions you had with</p> <p>15 Weil Gotshal or any of the other</p> <p>16 lawyers representing the debtors, to</p> <p>17 not include that in your answer.</p> <p>18 If there is advice you provided</p> <p>19 that was not formed in connection</p> <p>20 with discussions you had with Weil</p> <p>21 Gotshal, then you can provide that</p> <p>22 answer.</p> <p>23 THE WITNESS: Thank you.</p> <p>24 A. With that as a backdrop, I would</p> <p>25 characterize it as answering questions</p>
Page 24	Page 25
<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 and providing analysis with respect to</p> <p>3 the bid.</p> <p>4 Q. Let me ask you a different</p> <p>5 question then to avoid the issues</p> <p>6 associated with any privilege.</p> <p>7 When you received the bid</p> <p>8 contained in UCC Exhibit 2, what did you</p> <p>9 look at in order to analyze whether the</p> <p>10 bid -- to analyze the terms of the bid?</p> <p>11 A. Can you be more specific?</p> <p>12 Q. Sure. How did you go about</p> <p>13 assessing your view of the ESL bid</p> <p>14 contained in exhibit 2?</p> <p>15 A. I can't recall specifically in</p> <p>16 terms of what the immediate steps were.</p> <p>17 But certainly summarized the bid and</p> <p>18 tried to determine aggregate</p> <p>19 consideration and implication on the</p> <p>20 estate.</p> <p>21 Q. And when you say aggregate</p> <p>22 consideration, what did you do -- excuse</p> <p>23 me. What did you look at to determine</p> <p>24 your understanding of the aggregate</p> <p>25 consideration being provided in the bid</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 in exhibit 2?</p> <p>3 A. Aggregate consideration is a</p> <p>4 challenge just to say exactly what that</p> <p>5 is because there's consideration that's</p> <p>6 on the spectrum in terms of how firm</p> <p>7 that consideration is as well as some</p> <p>8 softer issues.</p> <p>9 If we just stick with what the</p> <p>10 more firm forms of consideration are,</p> <p>11 it's totalling the value to the estate</p> <p>12 of the bid.</p> <p>13 There are obviously other factors</p> <p>14 and consideration.</p> <p>15 Q. Understood. And one of the</p> <p>16 things you mentioned was the implication</p> <p>17 on the estate. Can you describe for me</p> <p>18 in a little more detail what you meant</p> <p>19 by the implication on the estate?</p> <p>20 A. Generally speaking, I can't</p> <p>21 recall what were the implications and</p> <p>22 what did we analyze. But I can give an</p> <p>23 example.</p> <p>24 Q. Sure.</p> <p>25 A. An example of which was what</p>



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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 would the resulting claims to the estate</p> <p>3 be under the bid, i.e., if they're</p> <p>4 assuming certain liabilities, what's the</p> <p>5 implication on the estate of that</p> <p>6 assumption, i.e., the estate would have</p> <p>7 less liabilities.</p> <p>8 Q. And when claims to the estate,</p> <p>9 meaning claims that would retain with</p> <p>10 the estate that weren't being assumed by</p> <p>11 Newco in a proposed transaction; is that</p> <p>12 correct?</p> <p>13 A. In both directions, but that</p> <p>14 would be one example.</p> <p>15 Q. And claims, were you particularly</p> <p>16 focused on any particular type of claim,</p> <p>17 for example, were you focused on making</p> <p>18 sure the estate was administratively</p> <p>19 solvent?</p> <p>20 A. Administrative solvency was a</p> <p>21 consideration. I'll leave it at that.</p> <p>22 Q. In addition to administrative</p> <p>23 solvency, what other considerations do</p> <p>24 you recall when you were evaluating or</p> <p>25 assessing the bid in exhibit 2?</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. I can't recall specifically.</p> <p>3 Q. Why was administrative solvency a</p> <p>4 consideration?</p> <p>5 MR. FRIEDMANN: I will also</p> <p>6 instruct the witness on this one.</p> <p>7 A. That's why I hesitated.</p> <p>8 MR. FRIEDMANN: Just again, just</p> <p>9 be careful because obviously to the</p> <p>10 extent that you have a view towards</p> <p>11 the importance of administrative</p> <p>12 solvency that's separate from advice</p> <p>13 provided by counsel, that's fine to</p> <p>14 share. But to the extent your view</p> <p>15 is informed in light of advice of</p> <p>16 counsel, I instruct you not to answer</p> <p>17 the question.</p> <p>18 A. My view of the importance of</p> <p>19 administrative solvency is very much</p> <p>20 informed by the advice of counsel.</p> <p>21 Q. What was your role as one of the</p> <p>22 debtors' advisors with respect to</p> <p>23 determinations of administrative</p> <p>24 solvency, if any?</p> <p>25 A. Conducting arithmetic.</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you describe for me what that</p> <p>3 entailed?</p> <p>4 A. Sure. M-III and the debtors</p> <p>5 provided a list of administrative</p> <p>6 liabilities, and we subtracted those</p> <p>7 being assumed or cash that we had to pay</p> <p>8 for those liabilities.</p> <p>9 Q. So Lazard didn't provide any</p> <p>10 judgment with respect to the</p> <p>11 calculations it made in connection with</p> <p>12 administrative solvency determinations?</p> <p>13 A. Did we provide judgment about our</p> <p>14 calculation?</p> <p>15 Q. Did you, in addition to doing the</p> <p>16 calculations, did you add any kind of</p> <p>17 additional judgment with respect to the</p> <p>18 information contained in that analysis?</p> <p>19 MR. FRIEDMANN: Object to form.</p> <p>20 A. I don't recall making judgment</p> <p>21 with respect to arithmetic.</p> <p>22 Q. And what I'm asking more</p> <p>23 specifically is, in determining, as you</p> <p>24 indicated earlier, administrative</p> <p>25 solvency involves assessing claims that</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 would remain at the company and maybe</p> <p>3 also value or other claims that could be</p> <p>4 brought into the company, for example,</p> <p>5 you understand the 503(b)(9) claims</p> <p>6 might be a certain category of claims in</p> <p>7 the administrative solvency analysis,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. With respect to 503(b)(9) claims,</p> <p>11 did you simply take information totalled</p> <p>12 up from the company or M-III that said</p> <p>13 here are the total 503(b)(9) claims we</p> <p>14 estimate and you plugged it into a</p> <p>15 calculation, or were you also involved</p> <p>16 in determining which 503(b)(9) claims</p> <p>17 should be included in that analysis?</p> <p>18 A. We relied on M-III and the</p> <p>19 company to determine, in your example,</p> <p>20 503(b)(9) claims.</p> <p>21 Q. Are there other types of claims</p> <p>22 where you didn't rely on the company or</p> <p>23 M-III and instead made some assessment</p> <p>24 of what claims should be included?</p> <p>25 A. I can't recall. But again all I</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 have in front of me is a bid letter from</p> <p>3 December 28th. I can't recall.</p> <p>4 Q. Going back to administrative</p> <p>5 solvency. Is it your testimony that the</p> <p>6 only understanding you have of why</p> <p>7 administrative solvency is a</p> <p>8 consideration is based on discussions</p> <p>9 you've had with counsel in this case?</p> <p>10 A. I think your question previously</p> <p>11 is what is your view of the importance</p> <p>12 of administrative solvency. I believe</p> <p>13 my answer was that is very much informed</p> <p>14 with the view of counsel. And to</p> <p>15 disintermediate my view of</p> <p>16 administrative solvency apart from that,</p> <p>17 I can't do.</p> <p>18 Q. Let's separate it from this case.</p> <p>19 Do you have an understanding of why</p> <p>20 conceptually or in any case</p> <p>21 administrative solvency or the goal of</p> <p>22 achieving administrative solvency could</p> <p>23 be an important goal?</p> <p>24 MR. WEAVER: Objection to form.</p> <p>25 A. Sure.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. What is that understanding?</p> <p>3 A. That to remain in Chapter 11,</p> <p>4 debtors need to pay their debts as they</p> <p>5 become due.</p> <p>6 Q. And what happens if that is not</p> <p>7 the case, if the debtors -- a debtor</p> <p>8 generally, not these debtors, are not</p> <p>9 able to pay debts as they come due?</p> <p>10 A. It depends on the facts and</p> <p>11 circumstances.</p> <p>12 Q. But is it your testimony that why</p> <p>13 administrative solvency was important</p> <p>14 here, or at least your understanding of</p> <p>15 that, cannot be, in your mind, separated</p> <p>16 from the information you'd received or</p> <p>17 heard from counsel?</p> <p>18 A. That's correct.</p> <p>19 MR. WEAVER: Objection to form.</p> <p>20 Q. Let me hand you what we're going</p> <p>21 to mark as committee exhibit 22.</p> <p>22 (Exhibit 22, Bates stamp</p> <p>23 SEARS_UCC00413809 was marked for</p> <p>24 identification.)</p> <p>25 MR. WEAVER: Joe, I'm sorry, can</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 we have an understanding that any</p> <p>3 objection by one is an objection by</p> <p>4 all?</p> <p>5 MR. SORKIN: Yes.</p> <p>6 Q. Feel free to take a minute to</p> <p>7 skim or read through exhibit 2 just to</p> <p>8 orient yourself. I will ask you some</p> <p>9 specific questions about specific</p> <p>10 passages that I'll direct you to. But</p> <p>11 understand that I'm going to ask you a</p> <p>12 general question to begin.</p> <p>13 A. Okay.</p> <p>14 Q. Okay. Mr. Aebersold, do you</p> <p>15 recall being involved in discussions</p> <p>16 with the restructuring committee of the</p> <p>17 board subsequent to the December 28th</p> <p>18 indicative bid provided by ESL regarding</p> <p>19 whether or not the bid should be</p> <p>20 accepted as a qualified bid?</p> <p>21 A. Generally, I recall being engaged</p> <p>22 with the restructuring committee during</p> <p>23 this time.</p> <p>24 Q. And was your role in connection</p> <p>25 with those discussions different than</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 the role that you played with respect to</p> <p>3 evaluating bids from the time of</p> <p>4 December 28th with the indicative bid,</p> <p>5 or the definitive bid, excuse me, that</p> <p>6 was provided by ESL through the close of</p> <p>7 the auction when the current bid was</p> <p>8 accepted by the debtors?</p> <p>9 A. I'm sorry, I don't understand the</p> <p>10 question.</p> <p>11 Q. Sure. What I'm trying to</p> <p>12 understand is, from December 28th until</p> <p>13 January 17th, as an advisor, we talked</p> <p>14 about how in your role you provided</p> <p>15 advice generally. And I understand that</p> <p>16 you indicated there wasn't a particular</p> <p>17 aspect of the negotiations that you</p> <p>18 handled. You provided advice as did</p> <p>19 others.</p> <p>20 My question is, from December 28th</p> <p>21 until January 17th was your role</p> <p>22 generally the same as an advisor?</p> <p>23 MR. FRIEDMANN: Object to form.</p> <p>24 A. Sorry. I just got to break this</p> <p>25 down.</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Sure.</p> <p>3 A. Because before you were asking me</p> <p>4 about my role during the auction I think</p> <p>5 was your question.</p> <p>6 Q. Understood. And now I'm trying</p> <p>7 to understand a little bit broader. Was</p> <p>8 your role generally the same with</p> <p>9 respect to providing advice to -- and</p> <p>10 let me be more specific -- to the</p> <p>11 restructuring committee in connection</p> <p>12 with bids received by ESL -- from ESL,</p> <p>13 excuse me?</p> <p>14 A. I'm not trying to be coy here.</p> <p>15 Q. Sure.</p> <p>16 A. But let me try this. Generally</p> <p>17 speaking, yes, we were providing advice</p> <p>18 and answering questions for the</p> <p>19 restructuring committee during that</p> <p>20 period of time that you mentioned.</p> <p>21 Q. Okay. During the period of time</p> <p>22 that I mentioned, December 28th until</p> <p>23 January 17th, did you ever provide a</p> <p>24 specific recommendation about whether or</p> <p>25 not to accept a bid provided by ESL to</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 the restructuring committee?</p> <p>3 A. I can't recall. Your question is</p> <p>4 do I recall giving a specific</p> <p>5 recommendation to the committee during</p> <p>6 that time period?</p> <p>7 Q. Correct. And what I'm wondering</p> <p>8 is, at some -- did you provide a</p> <p>9 specific thumbs up or thumbs down to the</p> <p>10 bid that was being considered by the</p> <p>11 restructuring subcommittee at any</p> <p>12 particular time?</p> <p>13 MR. FRIEDMANN: Object to form.</p> <p>14 A. During that entire period of</p> <p>15 time?</p> <p>16 Q. Correct.</p> <p>17 MR. FRIEDMANN: Object to form.</p> <p>18 A. I don't think that I phrase -- if</p> <p>19 I did, it wouldn't be phrased the way</p> <p>20 that you did, that I said.</p> <p>21 Q. I'm just trying to understand</p> <p>22 your role. Was it your role -- you've</p> <p>23 talked about answering questions being</p> <p>24 posed to you by the restructuring</p> <p>25 committee during the time December 28th</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 through January 17th when the</p> <p>3 restructuring committee was assessing</p> <p>4 various bids and proposals received by</p> <p>5 ESL, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Were you ever asked by the</p> <p>8 restructuring subcommittee or the</p> <p>9 restructuring committee -- strike that.</p> <p>10 Did you provide advice both to the</p> <p>11 restructuring committee and the</p> <p>12 restructuring subcommittee?</p> <p>13 MR. FRIEDMANN: Object to form.</p> <p>14 A. I provided advice to the</p> <p>15 restructuring committee which subsumes</p> <p>16 the restructuring subcommittee.</p> <p>17 Q. But when you were providing that</p> <p>18 advice, you were meeting with the</p> <p>19 restructuring committee, the entire</p> <p>20 committee, the four members as opposed</p> <p>21 to the restructuring subcommittee, the</p> <p>22 two members, correct?</p> <p>23 A. Correct.</p> <p>24 Q. When you were meeting with the</p> <p>25 restructuring committee, were you ever</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 asked or did you ever provide to them a</p> <p>3 specific recommendation either to accept</p> <p>4 or reject a bid that was on the table at</p> <p>5 any given time in that period December</p> <p>6 28th to January 17th from ESL?</p> <p>7 A. I can't recall the question being</p> <p>8 asked should we accept or reject this</p> <p>9 offer. I certainly had input into</p> <p>10 certain components into what I assume</p> <p>11 that they relied on to use their</p> <p>12 business judgment to come to that</p> <p>13 determination. But it was never put to</p> <p>14 me should we accept or reject this</p> <p>15 offer.</p> <p>16 Q. Okay. And that's what I'm</p> <p>17 wondering. Did the restructuring</p> <p>18 committee at any time from December 28th</p> <p>19 to January 17th ask you specifically,</p> <p>20 Mr. Aebersold, should we accept or</p> <p>21 reject this offer?</p> <p>22 A. They asked for my recommendation</p> <p>23 on components of it. I don't think it</p> <p>24 was ever phrased exactly like that to</p> <p>25 me.</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. And did they ever ask you,</p> <p>3 in any way, whether it was phrased</p> <p>4 exactly that way or not, what is your,</p> <p>5 recommendation, Mr. Aebersold, about</p> <p>6 whether we should accept or reject a</p> <p>7 particular bid that was on the table</p> <p>8 from ESL?</p> <p>9 MR. FRIEDMANN: Object to form.</p> <p>10 You're still in the same time frame,</p> <p>11 you included the word ever in your</p> <p>12 question.</p> <p>13 Q. I will agree that what we are</p> <p>14 talking about in this line of</p> <p>15 questioning until it changes is still</p> <p>16 the same time period, December 28th</p> <p>17 until January 17th because, Mr.</p> <p>18 Aebersold, you understand that until</p> <p>19 December 28th there was not a definitive</p> <p>20 bid from ESL, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So what I'm talking about is from</p> <p>23 the time there was a definitive bid from</p> <p>24 ESL until January 17th at 3 a.m. when</p> <p>25 the auction closed and the company</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 accepted the bid and has now in the</p> <p>3 notice of sale and in connection with</p> <p>4 the sale hearing that we're working</p> <p>5 towards next week, the proposal that's</p> <p>6 on the table in connection with that</p> <p>7 sale, my question is during that time</p> <p>8 period did you ever provide advice, in</p> <p>9 words or in substance, to the</p> <p>10 restructuring committee that they should</p> <p>11 accept the ESL bid, an ESL bid?</p> <p>12 A. Generally speaking, and again the</p> <p>13 way that you phrased it, is it accept or</p> <p>14 reject, we're not doing thumbs up or</p> <p>15 thumbs down. In that entire period</p> <p>16 through January 17th, we did recommend</p> <p>17 the ESL bid to be the successful bid at</p> <p>18 the auction, based on input from other</p> <p>19 advisors as well.</p> <p>20 Q. Setting aside any input from any</p> <p>21 other advisors, I'm asking you, as an</p> <p>22 advisor and given the information you</p> <p>23 have, at any point did you believe that</p> <p>24 the ESL bid should be the successful bid</p> <p>25 at the auction?</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 MR. FRIEDMANN: Object to form.</p> <p>3 A. Sorry. And your question is</p> <p>4 asking me to remove input from other</p> <p>5 advisors?</p> <p>6 Q. Yes.</p> <p>7 A. That's impossible to do because</p> <p>8 that decision is pretty complex and that</p> <p>9 determination would require input from</p> <p>10 the other advisors.</p> <p>11 Q. Okay. So you can't tell me or</p> <p>12 the court next week, on January 14th</p> <p>13 through 17th, during that time period,</p> <p>14 whether there was a point in time where</p> <p>15 you personally would have recommended to</p> <p>16 the restructuring committee that they</p> <p>17 accept the bid from ESL?</p> <p>18 MR. FRIEDMANN: Object to form,</p> <p>19 mischaracterizes prior testimony.</p> <p>20 A. That's right.</p> <p>21 Q. Then I'll ask it again. Was</p> <p>22 there a point in time, from January 14th</p> <p>23 through January 17th, where you</p> <p>24 personally would have recommended to the</p> <p>25 restructuring committee that they accept</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 a bid from ESL?</p> <p>3 MR. FRIEDMANN: Object to form.</p> <p>4 A. Yes, based on input from the</p> <p>5 other advisors, yes.</p> <p>6 Q. And did that happen? Was there a</p> <p>7 time where you personally recommended to</p> <p>8 the restructuring committee, from</p> <p>9 January 14th through January 17th, that</p> <p>10 they accept the bid from ESL?</p> <p>11 A. Yes, in the wee hours of January</p> <p>12 16th, I believe, approximately, based on</p> <p>13 additional input from the other advisors</p> <p>14 and importantly the debtors' management,</p> <p>15 we recommended the ESL bid as the</p> <p>16 highest or otherwise best bid during the</p> <p>17 auction.</p> <p>18 Q. And did you agree with that</p> <p>19 recommendation?</p> <p>20 MR. FRIEDMANN: Object to form.</p> <p>21 A. I'm sorry, I'm getting -- I'm not</p> <p>22 trying to be coy here. You asked me if</p> <p>23 we recommended it at any point. And I</p> <p>24 answered that. Now you're asking me if</p> <p>25 I personally?</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. When you said we, who did you</p> <p>3 mean?</p> <p>4 A. I meant Lazard.</p> <p>5 Q. Okay. Understood. So when you</p> <p>6 said we, you meant Lazard?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. That clarifies it for me,</p> <p>9 thank you. Prior to the wee hours of</p> <p>10 January 16th, had Lazard recommended at</p> <p>11 any point, from December 28th until</p> <p>12 January 16th, that the restructuring</p> <p>13 committee accept any bid from ESL?</p> <p>14 A. We were close until you said any</p> <p>15 bid. I don't recall making a</p> <p>16 recommendation before, whether it was</p> <p>17 January 15th or 16th or 17th, making a</p> <p>18 recommendation to move forward with that</p> <p>19 being a successful bid.</p> <p>20 Q. So I understand it sounds like</p> <p>21 there's -- you're having some trouble</p> <p>22 understandably with specificity in this</p> <p>23 time period and what bid was on the</p> <p>24 table. So why don't I just ask you</p> <p>25 generally, can you describe for me the</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 process you went through to evaluate the</p> <p>3 bids and the proposals that were made</p> <p>4 from December 28th until the one that</p> <p>5 was accepted in the wee hours of January</p> <p>6 16?</p> <p>7 MR. FRIEDMANN: Object to form.</p> <p>8 A. Let me isolate a couple of issues</p> <p>9 that we helped with.</p> <p>10 Q. Sure.</p> <p>11 A. There's a lot of factors that go</p> <p>12 into what's the highest or otherwise</p> <p>13 best bid.</p> <p>14 Q. Sure. I'm trying to understand</p> <p>15 what was your role and what you</p> <p>16 considered in the process so if you can</p> <p>17 help me understand that that would be</p> <p>18 helpful.</p> <p>19 A. Sure. Covers a broad range of</p> <p>20 topics and issues. I think two that</p> <p>21 were important to the restructuring</p> <p>22 committee throughout that period of time</p> <p>23 was, one, whether or not the bid would</p> <p>24 allow the company to remain</p> <p>25 administratively solvent through the</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 pendency of its Chapter 11 case. And</p> <p>3 number two, the ability to close the</p> <p>4 transaction both with respect to ESL and</p> <p>5 the debtors.</p> <p>6 Again, two of a list of issues.</p> <p>7 Q. Okay. With respect to the second</p> <p>8 one, ability to close both for ESL and</p> <p>9 debtors, can you describe for me in more</p> <p>10 detail what you mean?</p> <p>11 A. In general, an APA has closing</p> <p>12 conditions, and the question was would</p> <p>13 we be able to meet those closing</p> <p>14 conditions in order to close.</p> <p>15 Q. And are those conditions economic</p> <p>16 conditions, timing conditions, any</p> <p>17 number of conditions that you were</p> <p>18 considering?</p> <p>19 MR. FRIEDMANN: Object to form.</p> <p>20 A. Sure.</p> <p>21 Q. Meaning it was a range?</p> <p>22 A. Sure.</p> <p>23 Q. It wasn't any particular thing?</p> <p>24 A. It was not one particular</p> <p>25 condition.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. Mr. Aebersold, why don't</p> <p>3 we go back to exhibit 22. If you can</p> <p>4 look on the first page I'll see these</p> <p>5 are minutes from a restructuring</p> <p>6 committee meeting on December 30th, the</p> <p>7 meeting was held at 3:30 p.m., and if</p> <p>8 you look in the paragraph below</p> <p>9 materials presented you'll see that you</p> <p>10 are noted as being in attendance. Do</p> <p>11 you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any reason to believe</p> <p>14 you weren't there?</p> <p>15 A. No.</p> <p>16 Q. Do you remember --</p> <p>17 A. Telephonically, I was there</p> <p>18 telephonically.</p> <p>19 Q. Do you remember specifically the</p> <p>20 meeting from December 30th?</p> <p>21 A. Generally, I remember the call.</p> <p>22 Q. Having reviewed exhibit 22</p> <p>23 earlier, was there anything that you</p> <p>24 noted that seemed incorrect or</p> <p>25 inconsistent with your recollection of</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 the call from December 30?</p> <p>3 MR. FRIEDMANN: Object to form.</p> <p>4 A. I can't recall the call</p> <p>5 specifically so it's hard to see</p> <p>6 something that would have been contrary</p> <p>7 to my lack of specificity. But</p> <p>8 generally, nothing jumped out.</p> <p>9 Q. If you can look at the second</p> <p>10 page at the top, the first sentence</p> <p>11 after the initial redaction, there is a</p> <p>12 reference to the December 28th ESL bid</p> <p>13 rendering the estate administratively</p> <p>14 insolvent by approximately \$350 million.</p> <p>15 Do you see that?</p> <p>16 A. No, sorry, which paragraph?</p> <p>17 Q. The first, the carryover</p> <p>18 paragraph.</p> <p>19 A. With the redactions?</p> <p>20 Q. Correct. There are redactions in</p> <p>21 the paragraph.</p> <p>22 A. I'm sorry, I thought it was the</p> <p>23 paragraph below. My apologies.</p> <p>24 Q. No problem.</p> <p>25 A. I see it.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recall generally that the</p> <p>3 calculations indicated that the bid</p> <p>4 received on December 28th from ESL would</p> <p>5 render the estate administratively</p> <p>6 insolvent by approximately \$350 million?</p> <p>7 MR. FRIEDMANN: Object to form.</p> <p>8 A. Can you repeat the question.</p> <p>9 Q. Do you have a general</p> <p>10 recollection -- or strike that.</p> <p>11 Is the \$350 million number here</p> <p>12 that's noted on exhibit 22 consistent</p> <p>13 with your recollection of the amount the</p> <p>14 estate would have been rendered</p> <p>15 administratively insolvent in connection</p> <p>16 with the December 28th ESL bid?</p> <p>17 MR. WEAVER: Object to form.</p> <p>18 MR. FRIEDMANN: Object to form.</p> <p>19 A. I can't recall specifically, but</p> <p>20 I have no reason to think that this</p> <p>21 isn't approximately what the calculation</p> <p>22 said at the time.</p> <p>23 Q. Okay. And then if you go down</p> <p>24 three paragraphs to the paragraph that</p> <p>25 starts "The advisors discussed..." do</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Can you take a minute just to</p> <p>5 read that paragraph.</p> <p>6 A. Okay.</p> <p>7 Q. Do you have any reason to</p> <p>8 disagree with the summary that is</p> <p>9 reflected in the paragraph you just read</p> <p>10 that starts "The advisors discussed..."?</p> <p>11 MR. FRIEDMANN: Object to form.</p> <p>12 A. I don't have exhibit A in front</p> <p>13 of me, so, no, I don't have a reason to</p> <p>14 disagree with that.</p> <p>15 Q. Okay. And what is exhibit A?</p> <p>16 A. I don't know, just references an</p> <p>17 exhibit A that I don't have in front of</p> <p>18 me.</p> <p>19 Q. And would it be helpful -- if you</p> <p>20 flip the page you'll see exhibit A says</p> <p>21 global sale process bid qualification</p> <p>22 overview. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know what that is?</p> <p>25 A. I can't recall.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Would it help you to see exhibit</p> <p>3 A, exhibit B, exhibit C, exhibit D and</p> <p>4 exhibit E to understand and recall what</p> <p>5 happened during the December 30th</p> <p>6 minutes -- or meeting, excuse me?</p> <p>7 A. It would help me understand the</p> <p>8 specifics of potentially what could have</p> <p>9 been discussed. But in terms of this</p> <p>10 paragraph, I think your question was --</p> <p>11 could you repeat it, but I think you</p> <p>12 needed to see exhibit A to understand --</p> <p>13 to answer it.</p> <p>14 Q. Look, I agree myself, I haven't</p> <p>15 seen exhibit A.</p> <p>16 MR. SORKIN: Mr. Friedmann, I'd</p> <p>17 request that we get the exhibits that</p> <p>18 were attached to all of the minutes.</p> <p>19 I don't believe we have received any</p> <p>20 of the exhibits in connection with</p> <p>21 the production.</p> <p>22 MR. FRIEDMANN: I believe all of</p> <p>23 the documents that were the exhibits</p> <p>24 were produced. I'll refer to this</p> <p>25 one in particular and give the Bates</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 number. We're not trying to hide it</p> <p>3 from you. The way they were</p> <p>4 maintained in the ordinary course</p> <p>5 it's almost like they said enclosed</p> <p>6 and the documents are separate. But</p> <p>7 all of the presentations, that's my</p> <p>8 understanding, were in fact produced</p> <p>9 so you should in fact have it.</p> <p>10 MR. SORKIN: Thank you for that</p> <p>11 confirmation.</p> <p>12 MR. FRIEDMANN: I'm happy to</p> <p>13 match that up for you.</p> <p>14 MR. SORKIN: We can do that at a</p> <p>15 break or later in the day.</p> <p>16 Appreciate that.</p> <p>17 MR. FRIEDMANN: That's fine.</p> <p>18 Q. Okay. After exhibit A, if you</p> <p>19 can look at number 5, states "It" it</p> <p>20 being the ESL bid, "provides minimal</p> <p>21 consideration for unencumbered assets</p> <p>22 such as the Sparrow equity." Do you see</p> <p>23 that?</p> <p>24 A. I do.</p> <p>25 Q. What consideration, if any, do</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 you recall being provided in the</p> <p>3 December 28th ESL bid?</p> <p>4 A. I can't recall.</p> <p>5 Q. Let me ask that again. What</p> <p>6 consideration, if any, do you recall</p> <p>7 being provided in the December 28th ESL</p> <p>8 bid specifically for unencumbered</p> <p>9 assets?</p> <p>10 A. I can't recall seeing an</p> <p>11 allocation.</p> <p>12 Q. Do you recall if there was any</p> <p>13 consideration being provided for</p> <p>14 unencumbered assets in the December 28th</p> <p>15 bid?</p> <p>16 MR. FRIEDMANN: Object to form.</p> <p>17 A. Again, I can't recall seeing an</p> <p>18 allocation.</p> <p>19 Q. Do you know what unencumbered</p> <p>20 assets were included as potential assets</p> <p>21 in the ESL December 28th bid?</p> <p>22 A. Not specifically because I know</p> <p>23 that moved throughout the process and</p> <p>24 through the negotiations.</p> <p>25 Q. So let's move, fast forward to</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 now, the ESL bid that's being considered</p> <p>3 by the court. Do you know what</p> <p>4 consideration specifically is being</p> <p>5 provided for unencumbered assets?</p> <p>6 MR. WEAVER: Objection to form.</p> <p>7 A. Again, I don't recall an</p> <p>8 allocation.</p> <p>9 Q. If there was an allocation, would</p> <p>10 that help you understand what specific</p> <p>11 consideration is being provided for</p> <p>12 unencumbered assets?</p> <p>13 MR. FRIEDMANN: Object to form.</p> <p>14 A. Well, I think if there were an</p> <p>15 allocation they provided, I would at</p> <p>16 least know their view of their</p> <p>17 allocation with respect to the bid.</p> <p>18 Q. Have you seen an allocation by</p> <p>19 the debtors that indicates the debtors'</p> <p>20 view of the allocation of value in the</p> <p>21 current bid before the court?</p> <p>22 A. I think this goes to the</p> <p>23 questions earlier. The way that we've</p> <p>24 talked about allocation and lining up</p> <p>25 lines, I don't recall seeing one.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you have any understanding at</p> <p>3 all, whether it's through an allocation</p> <p>4 or otherwise, about the value that the</p> <p>5 debtors are receiving in connection with</p> <p>6 the current ESL bid that is before the</p> <p>7 court in exchange for the unencumbered</p> <p>8 assets that the debtors are proposing to</p> <p>9 sell to ESL?</p> <p>10 MR. FRIEDMANN: Object to form.</p> <p>11 A. I haven't seen a specific</p> <p>12 allocation. It's probably a better</p> <p>13 question for ESL.</p> <p>14 Q. The debtors haven't done that</p> <p>15 analysis as far as you know?</p> <p>16 A. The debtors have not allocated</p> <p>17 ESL's value in their bid, of which I'm</p> <p>18 aware.</p> <p>19 Q. Have the debtors allocated any</p> <p>20 value for the unencumbered assets that</p> <p>21 are included in the proposed sale to ESL</p> <p>22 that is before the court?</p> <p>23 MR. FRIEDMANN: Object to form,</p> <p>24 asked and answered.</p> <p>25 A. I would just repeat my prior</p>

<p style="text-align: right;">Page 54</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 answer.</p> <p>3 Q. Are you aware of any valuation</p> <p>4 that the debtors have done with respect</p> <p>5 to the unencumbered assets that are</p> <p>6 included in the proposed sale to ESL</p> <p>7 that is before the court?</p> <p>8 A. Could we talk about valuation?</p> <p>9 What do you mean by that term?</p> <p>10 Q. Are you aware of any assignment</p> <p>11 of value under any definition that the</p> <p>12 debtors have assigned to the</p> <p>13 unencumbered assets that are being</p> <p>14 provided in connection with the proposed</p> <p>15 sale to ESL that's before the court?</p> <p>16 A. That was very particular in terms</p> <p>17 of an assignment of value. The reason I</p> <p>18 asked you to define value, is my</p> <p>19 question would be would you consider an</p> <p>20 appraisal of real estate a valuation?</p> <p>21 Q. I don't have a specific</p> <p>22 definition. I'm asking you based on</p> <p>23 your understanding of value, are you</p> <p>24 aware of any value that has been</p> <p>25 assigned to the unencumbered assets</p>	<p style="text-align: right;">Page 55</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 being proposed in connection with the</p> <p>3 bid to ESL?</p> <p>4 A. I can't speak for -- I'm not</p> <p>5 aware of Lazard preparing a valuation.</p> <p>6 Q. Are you aware of any entity? You</p> <p>7 indicated appraisals, so I assume you're</p> <p>8 aware of appraisals of real estate</p> <p>9 values; is that correct?</p> <p>10 A. I'm generally aware that there</p> <p>11 are appraisals of real estate value.</p> <p>12 Q. Were you involved in the process</p> <p>13 of preparing those appraisals?</p> <p>14 A. No.</p> <p>15 Q. Other than the appraisals, are</p> <p>16 you aware of any other process to</p> <p>17 determine or assign value under any</p> <p>18 methodology to any of the unencumbered</p> <p>19 assets that are being proposed in the</p> <p>20 sale to ESL?</p> <p>21 A. When you keep saying, you say the</p> <p>22 word assign or assignment, can you be</p> <p>23 more clear with what you're trying to</p> <p>24 ask there?</p> <p>25 Q. Sure. There are unencumbered</p>
<p style="text-align: right;">Page 56</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 assets that are included in the proposed</p> <p>3 sale to ESL, correct?</p> <p>4 A. There are.</p> <p>5 Q. Do you have any understanding of</p> <p>6 what the value of those unencumbered</p> <p>7 assets are?</p> <p>8 A. The reason I was hung up on the</p> <p>9 word assignment is again I think that</p> <p>10 ties back into how you described</p> <p>11 allocation.</p> <p>12 Q. Right.</p> <p>13 A. I'm trying to go a different</p> <p>14 direction which is you asked me also if</p> <p>15 there had been any work done in terms of</p> <p>16 the value of these assets.</p> <p>17 Q. Sure. I'm asking you a different</p> <p>18 question now to address your concerns.</p> <p>19 Mr. Aebersold, do you have any</p> <p>20 understanding of what the value of those</p> <p>21 unencumbered assets are?</p> <p>22 A. There are certain assets,</p> <p>23 components of which are unencumbered,</p> <p>24 and to ask me if I have any sense of</p> <p>25 value, sure, we've been marketing</p>	<p style="text-align: right;">Page 57</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 certain of those assets for several</p> <p>3 months. But no, we have not done a</p> <p>4 valuation and we have not assigned value</p> <p>5 to specific assets.</p> <p>6 Q. Are you aware of any valuation or</p> <p>7 assignment of value to specific assets,</p> <p>8 other than the appraisals that we</p> <p>9 referenced, that the debtors have done?</p> <p>10 MR. FRIEDMANN: Object to form.</p> <p>11 A. I'll just try to isolate certain</p> <p>12 words within that. I'm not aware of a</p> <p>13 valuation of a specific asset, other</p> <p>14 than appraisals.</p> <p>15 Q. You mentioned certain of the</p> <p>16 assets you had been marketing for</p> <p>17 several months. When did you begin</p> <p>18 marketing assets for Sears?</p> <p>19 A. We began marketing in</p> <p>20 mid-October.</p> <p>21 Q. What assets did you begin</p> <p>22 marketing?</p> <p>23 A. Well, I will begin by saying we</p> <p>24 would entertain interest on any of the</p> <p>25 companies' assets. I think to specify</p>



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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 certain of those assets in which there</p> <p>3 were either a level of interest or we</p> <p>4 made outbound calls, I think the most</p> <p>5 important of those assets which have</p> <p>6 components of which are unencumbered,</p> <p>7 are the assets under the Sears Home</p> <p>8 Services umbrella.</p> <p>9 Q. Any other assets that you can</p> <p>10 recall that were unencumbered that were</p> <p>11 included that you either received</p> <p>12 inbound interest in or expressed sort</p> <p>13 of, tried to gauge outbound interest in</p> <p>14 with respect to unencumbered assets?</p> <p>15 A. Sure. And again you have to be</p> <p>16 careful with the term unencumbered</p> <p>17 assets. Maybe it's easier for us if we</p> <p>18 just say --</p> <p>19 Q. Any assets. I'm fine with that.</p> <p>20 Any assets that you marketed.</p> <p>21 A. Okay. Again, we had information</p> <p>22 available with respect to all of the</p> <p>23 company's assets, certain of which had</p> <p>24 confidential information memorandums,</p> <p>25 some of which we had inbound requests</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 on, some of which we put outbound</p> <p>3 requests to see if we could attract</p> <p>4 interest.</p> <p>5 But everything was marketed to the</p> <p>6 extent that you're open to have</p> <p>7 discussions and allow people to do</p> <p>8 diligence to form a bid on an asset.</p> <p>9 Q. Which assets of Sears had you</p> <p>10 prepared a confidential information</p> <p>11 memorandum for?</p> <p>12 A. We had updated confidential</p> <p>13 information memorandums with respect to</p> <p>14 Sears Home Services generally, Parts</p> <p>15 Direct as a subsidiary entity. We had</p> <p>16 information available, it's hard to call</p> <p>17 it a CIM, but certainly an overview of</p> <p>18 Innovel. And again, you have to</p> <p>19 remember Sears Home Services is an</p> <p>20 umbrella with five subsidiary</p> <p>21 businesses.</p> <p>22 I know that the two underlying</p> <p>23 subsidiary businesses had their own</p> <p>24 CIMs.</p> <p>25 Whether or not SHIP had its own</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 information memorandum or the franchise</p> <p>3 business, but I know that those</p> <p>4 businesses were included in the Sears</p> <p>5 Home Services overarching CIM.</p> <p>6 Q. Which subsidiary businesses do</p> <p>7 you include in the Sears Home Services</p> <p>8 overarching umbrella of businesses?</p> <p>9 A. It includes the warranty</p> <p>10 business, the repair business, Parts</p> <p>11 Direct, SHIP, which is Sears Home</p> <p>12 Improvement Products, goes by the</p> <p>13 acronym SHIP, and there's a small</p> <p>14 franchise business embedded in that</p> <p>15 business.</p> <p>16 Q. When did you prepare the</p> <p>17 confidential information memorandum for</p> <p>18 Sears Home Services?</p> <p>19 A. At around the time of filing.</p> <p>20 Q. When was it finished?</p> <p>21 A. I can't recall specifically.</p> <p>22 Q. Was it November?</p> <p>23 A. I can't recall specifically, but</p> <p>24 sometime in late October, early</p> <p>25 November.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. We will come back to the</p> <p>3 marketing in a little bit. I want to</p> <p>4 turn back to exhibit 22. If we go back</p> <p>5 to page 2, the minimal consideration</p> <p>6 that we had been looking at for</p> <p>7 unencumbered assets. Do you see that</p> <p>8 line again?</p> <p>9 A. Sorry. Could you direct me to it</p> <p>10 again.</p> <p>11 Q. Sure. It's in the third full</p> <p>12 paragraph down, there are five items</p> <p>13 identified specifically. And the fifth</p> <p>14 one is "It provides," it being ESL bid,</p> <p>15 from December 28th "provides minimal</p> <p>16 consideration for unencumbered assets</p> <p>17 such as the Sparrow equity." Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. If I wanted to understand, or if</p> <p>21 you wanted to refresh your recollection</p> <p>22 about what that minimal consideration</p> <p>23 was, where would you look?</p> <p>24 A. I don't know.</p> <p>25 Q. Would it be contained in the</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 December 28th definitive bid letter</p> <p>3 that's marked as exhibit 2?</p> <p>4 A. Again, they didn't, not that I</p> <p>5 recall, ever allocate value.</p> <p>6 Q. You mentioned earlier one of the</p> <p>7 things that you evaluated was</p> <p>8 conditionality and the ability to close</p> <p>9 ultimately.</p> <p>10 Do you recall specifically with</p> <p>11 respect to the December 28th definitive</p> <p>12 bid, whether you had any concerns about</p> <p>13 conditionality associated with that bid?</p> <p>14 A. For clarification, you're talking</p> <p>15 about the December 28th bid?</p> <p>16 Q. I am now talking about December</p> <p>17 28th bid, yes.</p> <p>18 A. And your question was do I</p> <p>19 recall?</p> <p>20 Q. Do you recall any concerns you</p> <p>21 had about conditionality with respect to</p> <p>22 the December 28th bid?</p> <p>23 A. I do.</p> <p>24 Q. What do you recall?</p> <p>25 A. Can't recall all the specifics.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 I generally recall having the view that</p> <p>3 the company wouldn't have enough cash to</p> <p>4 close the transaction.</p> <p>5 Q. And the company not having enough</p> <p>6 cash to close the transaction, is that,</p> <p>7 or can you describe for me how that</p> <p>8 relates to administrative solvency or</p> <p>9 insolvency? Are those the same things</p> <p>10 or are they related to each other but</p> <p>11 different?</p> <p>12 MR. FRIEDMANN: Object to form.</p> <p>13 A. Related but different.</p> <p>14 Q. Okay. Can you explain how</p> <p>15 they're related but different?</p> <p>16 A. Well obviously, cash to close a</p> <p>17 transaction, you're closing the</p> <p>18 transaction with respect to all</p> <p>19 administrative claims or using that</p> <p>20 cash, which would otherwise go to</p> <p>21 administrative solvency, and so that's</p> <p>22 how they're related. But they are</p> <p>23 distinct and they're separate in that</p> <p>24 one, you need to close a transaction,</p> <p>25 i.e., have cash to be able to do that as</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 a first step, and then as a second step</p> <p>3 to remain administratively solvent.</p> <p>4 Q. Okay. So -- I'm sorry, I didn't</p> <p>5 mean to cut you off.</p> <p>6 A. No, that's okay.</p> <p>7 Q. So cash to close, if I understand</p> <p>8 that, that's enough cash to continue to</p> <p>9 fund operations to get to a close date;</p> <p>10 is that correct?</p> <p>11 A. No.</p> <p>12 Q. No? Can you tell me then what</p> <p>13 I'm -- maybe I'm misunderstanding. If</p> <p>14 you could tell me cash to close a</p> <p>15 transaction?</p> <p>16 A. Certain conditions precedent</p> <p>17 under the APA require cash to meet those</p> <p>18 obligations. And so having that cash to</p> <p>19 meet those obligations is generally what</p> <p>20 I mean when I say cash to close the</p> <p>21 transaction.</p> <p>22 Q. So it's cash to fulfill the</p> <p>23 conditions that would be contained in</p> <p>24 the contract, the closing contract, or</p> <p>25 the contract of sale, excuse me?</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. So articulately said, thank you.</p> <p>3 Q. And administratively solvency is</p> <p>4 looking at sort of a broader set of</p> <p>5 considerations with respect to the</p> <p>6 ability to pay the administrative claims</p> <p>7 or obligations of the entire debtors'</p> <p>8 estate over some amount of time,</p> <p>9 correct?</p> <p>10 A. That's generally right, yes.</p> <p>11 Q. If you can move in exhibit 22 to</p> <p>12 the third paragraph on the last page and</p> <p>13 the first sentence states, "Mr.</p> <p>14 Aebersold presented the key terms of the</p> <p>15 bids for Sears Home Services."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember which bids had</p> <p>19 been received for Sears Home Services?</p> <p>20 A. On December 30th we had bids. I</p> <p>21 can't be certain of which we'd received</p> <p>22 by this point in time.</p> <p>23 Q. The next sentence states "He" --</p> <p>24 that would be you from the sentence</p> <p>25 before, "stressed the importance of</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 rescheduling the auction for February</p> <p>3 2019 to extend the sales process for</p> <p>4 Sears Home Services, Kenmore, DieHard</p> <p>5 and Parts Direct if a bid from ESL was</p> <p>6 not ultimately qualified."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Why was it important to</p> <p>10 reschedule the auction for February 2019</p> <p>11 to extend the sales process for those</p> <p>12 particular business lines?</p> <p>13 A. Let's take it in its component</p> <p>14 pieces.</p> <p>15 Q. Sure.</p> <p>16 A. So Kenmore and DieHard, again,</p> <p>17 that IP is not within the debtors'</p> <p>18 estate and we were in conversations with</p> <p>19 the PBGC in terms of reaching a deal</p> <p>20 with them just to get resolution with</p> <p>21 their outstanding claims. Those assets</p> <p>22 have not been marketed. Information had</p> <p>23 been made available in the data room,</p> <p>24 but that would have been a separate</p> <p>25 process that we had not conducted at</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 that point in time.</p> <p>3 And so, from our perspective, if a</p> <p>4 deal with the PBGC required a marketing</p> <p>5 process, we certainly wouldn't be able</p> <p>6 to run that full process and close it in</p> <p>7 January.</p> <p>8 With respect to Parts Direct and</p> <p>9 Sears Home Services, we thought it would</p> <p>10 be valuable with respect to those</p> <p>11 processes to have a stalking horse in</p> <p>12 place at the time of the auction. And</p> <p>13 so the view here was if we gave people</p> <p>14 more time and were able to actually take</p> <p>15 a marked up asset purchase agreement and</p> <p>16 finalize it and get a deposit, that that</p> <p>17 could be helpful to a later auction.</p> <p>18 Q. Is there a reason that having</p> <p>19 more time with respect to Sears Home</p> <p>20 Services and Parts Direct would be</p> <p>21 different than having more time with</p> <p>22 respect to other assets of the company</p> <p>23 in terms of generating interest and</p> <p>24 having an opportunity to sell certain</p> <p>25 assets?</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. Which assets?</p> <p>3 Q. I guess I'm just wondering</p> <p>4 generally, there were a specific list of</p> <p>5 Sears Home Services and Parts Direct and</p> <p>6 you identified that for those business</p> <p>7 lines, for those assets of the debtors</p> <p>8 it would be beneficial to have more</p> <p>9 time.</p> <p>10 I'm trying to understand whether</p> <p>11 there are other assets where more time</p> <p>12 wouldn't have been helpful and it made</p> <p>13 sense just to go ahead and sell them?</p> <p>14 A. Are you asking theoretically</p> <p>15 could there have been other assets that</p> <p>16 it may have been helpful to proceed on a</p> <p>17 more expedited basis?</p> <p>18 Q. I'm asking that it indicates you</p> <p>19 identified four particular assets of the</p> <p>20 company. Are there other assets that</p> <p>21 would have been different where it would</p> <p>22 have made more sense to tell them more</p> <p>23 quickly?</p> <p>24 A. I didn't write the minutes or</p> <p>25 review them.</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Sure.</p> <p>3 A. I'm just relying on what this</p> <p>4 says.</p> <p>5 Q. Okay.</p> <p>6 A. I would assume I named those four</p> <p>7 in particular. But whether or not this</p> <p>8 list is exhaustive or there's others</p> <p>9 that cut the other direction, I can't be</p> <p>10 sure.</p> <p>11 Q. What about Innovel, would Innovel</p> <p>12 have been the same?</p> <p>13 A. That more time would have helped</p> <p>14 with the marketing of Innovel?</p> <p>15 Q. Yes.</p> <p>16 A. I'm not sure more time would have</p> <p>17 been helpful to the marketing of</p> <p>18 Innovel.</p> <p>19 Q. Why is that?</p> <p>20 A. Because Innovel, after a number</p> <p>21 of conversations with bidders and our</p> <p>22 own analysis, is not a fully functioning</p> <p>23 standalone business. So I'm not exactly</p> <p>24 sure how more time would have helped us</p> <p>25 to drive value for a business that</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 generates negative EBITDA and 75 percent</p> <p>3 of its revenue is generated from the</p> <p>4 Sears retail platform that wouldn't</p> <p>5 exist in the event of a winddown.</p> <p>6 Q. What about real estate, would</p> <p>7 more time have been helpful in marketing</p> <p>8 the company's real estate assets?</p> <p>9 A. I can't answer that. I was not</p> <p>10 intimately involved with the real estate</p> <p>11 process.</p> <p>12 Q. Did you have any involvement at</p> <p>13 all in the real estate process,</p> <p>14 marketing process?</p> <p>15 A. Not in the marketing process,</p> <p>16 other than people contacting me with</p> <p>17 respect to real estate, not knowing that</p> <p>18 JLL was actually running that process,</p> <p>19 answering questions about the overall</p> <p>20 process and forwarding that to the real</p> <p>21 estate advisors. Not much more than</p> <p>22 that.</p> <p>23 Q. So if you received inbound</p> <p>24 inquiries with respect to real estate,</p> <p>25 you forwarded those on to JLL?</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. They were forwarded to JLL,</p> <p>3 individuals at M-III and the companies</p> <p>4 who were handling real estate. Certain</p> <p>5 of that inbound interest we logged. If</p> <p>6 there was another component of the</p> <p>7 business that they would have been</p> <p>8 interested in, we would sometimes have a</p> <p>9 call with them to give the overview of</p> <p>10 the process, again trying to facilitate</p> <p>11 that process, although we weren't</p> <p>12 leading it or directly involved.</p> <p>13 Q. You don't have a view as to</p> <p>14 whether or not more time would have been</p> <p>15 helpful in marketing the debtors' real</p> <p>16 estate assets?</p> <p>17 A. I can't answer that.</p> <p>18 Q. Mr. Aebersold, I wanted to go to</p> <p>19 sort of the early morning hours of</p> <p>20 January 16th. If you can recall?</p> <p>21 A. Is that Tuesday?</p> <p>22 Q. So I believe what I'm talking</p> <p>23 about, the auction started on Monday,</p> <p>24 you recall that, January 14th?</p> <p>25 A. 14th, okay.</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. So Tuesday, January 15th, and</p> <p>3 then if you go to --</p> <p>4 A. Wednesday morning.</p> <p>5 Q. -- midnight, 1 a.m.</p> <p>6 A. Past midnight, that's why I said</p> <p>7 Tuesday, understood.</p> <p>8 Q. So it's Tuesday during the day in</p> <p>9 terms of when you wake up and before you</p> <p>10 go to bed, but technically it's</p> <p>11 Wednesday morning.</p> <p>12 A. I got it.</p> <p>13 Q. Or when one would normally wake</p> <p>14 up or go to bed, that might all be</p> <p>15 different for all of us currently.</p> <p>16 A. Fair.</p> <p>17 Q. So I'm now talking about late</p> <p>18 Tuesday night January 15th, early</p> <p>19 Wednesday morning January 16th.</p> <p>20 Can you describe for me the</p> <p>21 meeting, to the extent you were present,</p> <p>22 at which the restructuring committee</p> <p>23 decided to accept the ESL bid?</p> <p>24 A. I can.</p> <p>25 Q. Can you tell me about what time</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 that was, if you recall?</p> <p>3 A. I was in an absolute time warp.</p> <p>4 I couldn't be at all specific. I think</p> <p>5 it was just before midnight. You could</p> <p>6 probably help me with when that</p> <p>7 occurred, but it seems it was late on</p> <p>8 Tuesday, whether or not it was Wednesday</p> <p>9 morning, I can't recall.</p> <p>10 Q. Do you recall who was in the room</p> <p>11 during that meeting?</p> <p>12 A. There were a lot of people in the</p> <p>13 room and on the telephone. But</p> <p>14 generally speaking, it was</p> <p>15 representatives of M-III, Weil Gotshal,</p> <p>16 Lazard, the debtors' management, members</p> <p>17 of the restructuring committee and</p> <p>18 advisors to the restructuring</p> <p>19 subcommittee.</p> <p>20 Q. Were you in the room for that</p> <p>21 meeting?</p> <p>22 A. I was.</p> <p>23 Q. Do you remember how long the</p> <p>24 meeting lasted?</p> <p>25 A. I can't recall specifically. An</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 hour? I'm not sure.</p> <p>3 MR. FRIEDMANN: Do you want to</p> <p>4 not give him the minutes of the</p> <p>5 meeting to answer all these questions</p> <p>6 rather than testing his memory on all</p> <p>7 of this?</p> <p>8 MR. SORKIN: No.</p> <p>9 Q. What I'm trying to understand is</p> <p>10 were you in the room for the entirety of</p> <p>11 the meeting or was it a fluid meeting,</p> <p>12 there were people in and out? I'm</p> <p>13 trying to understand what it looked</p> <p>14 like?</p> <p>15 A. I know exactly where you're going</p> <p>16 with this and this one is an easy one to</p> <p>17 answer. I was there for the absolute</p> <p>18 entirety of that restructuring committee</p> <p>19 meeting.</p> <p>20 Q. And in terms of the sort of</p> <p>21 questions presented and advice given, at</p> <p>22 that meeting was there a time where you</p> <p>23 recall, and I know we talked about this</p> <p>24 earlier so I just want to line it up to</p> <p>25 this meeting, was there a time during</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 the meeting we're talking about, sort of</p> <p>3 early morning hours of January 16th,</p> <p>4 where you recommended, based on input</p> <p>5 from all of the advisors that we talked</p> <p>6 about earlier, that the restructuring</p> <p>7 committee accept the ESL bid?</p> <p>8 A. Yes, the answer that I provided</p> <p>9 previously that you're alluding to was</p> <p>10 at the end of that particular meeting.</p> <p>11 Q. Let me go ahead and hand you</p> <p>12 what's been previously marked as exhibit</p> <p>13 49.</p> <p>14 A. Is this the answer key to my</p> <p>15 memory test?</p> <p>16 MR. FRIEDMANN: Yes. Why we took</p> <p>17 the memory test first, Joseph will</p> <p>18 let us know at some later date. By</p> <p>19 the way, here are your Bates numbers.</p> <p>20 MR. SORKIN: Thank you.</p> <p>21 (Exhibit 49, previously marked</p> <p>22 and shown to witness.)</p> <p>23 Q. Mr. Aebersold, I've handed you</p> <p>24 what was previously marked as exhibit</p> <p>25 49. Exhibit 49 are the minutes of the</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 restructuring committee meeting from</p> <p>3 January 16th, these indicate 1 a.m.,</p> <p>4 again consistent with what you recall</p> <p>5 generally about the meeting.</p> <p>6 If you could take just a minute to</p> <p>7 review the minutes and I will then have</p> <p>8 a couple of questions for you.</p> <p>9 A. Okay.</p> <p>10 Q. Okay. Before we look at a couple</p> <p>11 of items specifically in exhibit 49, I'm</p> <p>12 actually just curious, why was it when I</p> <p>13 asked the question about whether you</p> <p>14 were in the meeting you indicated I know</p> <p>15 where you're going with this?</p> <p>16 A. Sure. Because I, at the</p> <p>17 conclusion of the meeting, stepped into</p> <p>18 the hallway and left everyone else in</p> <p>19 the meeting to try one more effort</p> <p>20 against ESL to derive more value from</p> <p>21 their bid. And we staged it tactically</p> <p>22 so it looked like the meeting was still</p> <p>23 ongoing but that we were struggling</p> <p>24 getting approval, so I went back as a</p> <p>25 tactical effort to improve the bid one</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 last time.</p> <p>3 Q. And --</p> <p>4 A. So it worked in that it came to</p> <p>5 you that I was not actually part of the</p> <p>6 meeting as it was ongoing. But I'm</p> <p>7 pleased that that worked.</p> <p>8 Q. So when you came out of the</p> <p>9 meeting, to your understanding the</p> <p>10 meeting had already concluded and a</p> <p>11 decision had been made, and I'll note in</p> <p>12 the -- in exhibit 49 towards the end it</p> <p>13 says, in the second to last paragraph,</p> <p>14 "Subject to giving Mr. Aebersold the</p> <p>15 authority to try to negotiate for</p> <p>16 further improvements." Is that what you</p> <p>17 were doing when you left the meeting?</p> <p>18 A. That's correct.</p> <p>19 Q. Let me ask you, if you look at,</p> <p>20 on page 2 of exhibit 49, the first</p> <p>21 sentence, "Mr. Aebersold stated that</p> <p>22 there was \$87 million of pro forma of</p> <p>23 additional value required, creating a</p> <p>24 risk that there would not be enough cash</p> <p>25 to close the transaction or to become</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 administratively solvent."</p> <p>3 Is that what we were talking about</p> <p>4 earlier with respect to cash to close,</p> <p>5 meaning cash in order to meet the</p> <p>6 conditions in the APA, and separately,</p> <p>7 administrative solvency which we</p> <p>8 discussed earlier? Are those two</p> <p>9 concepts the same two concepts we talked</p> <p>10 about earlier?</p> <p>11 MR. FRIEDMANN: Object to form.</p> <p>12 A. Same two concepts. Not speaking</p> <p>13 to the actual amount of this number</p> <p>14 here, but I believe as it's used here</p> <p>15 this goes more to administrative</p> <p>16 solvency, a component of which is the</p> <p>17 cash consideration necessary to close.</p> <p>18 Q. Okay. Understood. And the</p> <p>19 number here indicates \$87 million pro</p> <p>20 forma, correct?</p> <p>21 A. Pro forma for?</p> <p>22 Q. "Of additional value required" in</p> <p>23 the same sentence?</p> <p>24 A. It's an odd usage of the words</p> <p>25 pro forma but yes, here it states the</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 number is 87 million.</p> <p>3 Q. And do you remember whether that</p> <p>4 87 million, as I think you indicated,</p> <p>5 really went more towards administrative</p> <p>6 solvency?</p> <p>7 A. I can't recall specifically.</p> <p>8 Q. In terms of at this meeting, do</p> <p>9 you recall whether you presented or</p> <p>10 someone from Lazard presented to the</p> <p>11 restructuring committee information</p> <p>12 showing what the potential or the</p> <p>13 anticipated administrative solvency</p> <p>14 might be?</p> <p>15 A. At this meeting?</p> <p>16 Q. Yes.</p> <p>17 A. Yes, we spoke to those issues,</p> <p>18 among others, during this meeting.</p> <p>19 Q. And during this meeting, was it</p> <p>20 Lazard's responsibility for determining</p> <p>21 what that number was, or was it somebody</p> <p>22 else, M-III or the company, with respect</p> <p>23 to administrative solvency?</p> <p>24 A. So responsibility probably not</p> <p>25 the right term, because again, as we</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 talked about before, most of the inputs</p> <p>3 to administrative solvency or cash to</p> <p>4 close are numbers that are coming from</p> <p>5 the company or its financial advisor in</p> <p>6 this case, M-III. And so those</p> <p>7 components were consolidated and</p> <p>8 summarized in work that we took the</p> <p>9 lead, I wouldn't say responsibility, we</p> <p>10 took the lead on. And again, at that</p> <p>11 point it's mostly arithmetic.</p> <p>12 Q. If you look down to the paragraph</p> <p>13 at the bottom of the second page of</p> <p>14 exhibit 49 that carries over to the</p> <p>15 third page that starts "Mr. Aebersold</p> <p>16 stated that the ESL final bid was</p> <p>17 materially better." Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. The second sentence states "While</p> <p>20 the gap was not closed completely and he</p> <p>21 could not say with confidence that there</p> <p>22 would be sufficient liquidity to close</p> <p>23 the transaction and to be</p> <p>24 administratively solvent, ESL had added</p> <p>25 a total of \$153 million in value." Do</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 you see that?</p> <p>3 A. I do.</p> <p>4 Q. Is that consistent with your</p> <p>5 recollection of what you told the</p> <p>6 restructuring committee during this</p> <p>7 meeting?</p> <p>8 A. Can't recall specifically, but</p> <p>9 generally, yes.</p> <p>10 Q. Do you remember what the \$153</p> <p>11 million in value was that ESL had added</p> <p>12 at this time?</p> <p>13 A. I can't recall specifically. I</p> <p>14 know there was some give and takes.</p> <p>15 I know that one component of that</p> <p>16 number was the assumption of the full</p> <p>17 amount of the Junior DIP. They were</p> <p>18 also leaving some cash behind with the</p> <p>19 company, and I believe assuming some</p> <p>20 other liabilities.</p> <p>21 Q. Do you know if this hundred --</p> <p>22 and if it helps I'll refer you back to</p> <p>23 the last paragraph on the first page of</p> <p>24 exhibit 49 that's a carryover to the</p> <p>25 second page, it identifies a number of</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 items that were contained in ESL's final</p> <p>3 proposal. Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. If you want to take a minute and</p> <p>6 look and see if these numbers help you.</p> <p>7 Do you know if the \$153 million in value</p> <p>8 includes or excludes SHIP?</p> <p>9 A. I don't know for certain.</p> <p>10 However, I believe that number excludes</p> <p>11 -- sorry, includes SHIP because it's a</p> <p>12 net number obviously. Sorry. Let me</p> <p>13 back up a second.</p> <p>14 Q. Sure.</p> <p>15 A. When you say include or exclude,</p> <p>16 you mean the number or the package of</p> <p>17 consideration?</p> <p>18 Q. I was talking about the number.</p> <p>19 So let's do this a little differently.</p> <p>20 If we go back to page 1 on exhibit 49</p> <p>21 and identify the items that were</p> <p>22 included in ESL's final proposal, the</p> <p>23 first one indicates that all \$350</p> <p>24 million of the Junior DIP would be</p> <p>25 assumed by Newco. Do you see that?</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. Sorry, which page is that?</p> <p>3 Q. Sure, it's the first page,</p> <p>4 carryover to the second page.</p> <p>5 A. Yes, I do. Sorry.</p> <p>6 Q. Is there a value that you're</p> <p>7 aware of that was assigned to all \$350</p> <p>8 million of the Junior DIP being assumed?</p> <p>9 A. Was there a value placed on \$350</p> <p>10 million?</p> <p>11 Q. Sure, here's what I'm trying to</p> <p>12 do. I'm trying to determine that \$153</p> <p>13 million that we talked about on page 3</p> <p>14 of exhibit 49, what makes up that 153</p> <p>15 million.</p> <p>16 So if we look at ESL's final bid,</p> <p>17 they're going to assume all \$350</p> <p>18 million. It's my understanding that</p> <p>19 they were already assuming \$230 million</p> <p>20 and that the change was that they would</p> <p>21 also assume 120. Is that your</p> <p>22 understanding too?</p> <p>23 A. Yes. And you're going to hate me</p> <p>24 for doing this, let me help you out. I</p> <p>25 don't have a calculator with me. But in</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 terms of -- and again I think you</p> <p>3 probably have a presentation that would</p> <p>4 answer this question for us -- the 153</p> <p>5 is likely, and is going to be a ball</p> <p>6 park figure, the sum of the \$120 million</p> <p>7 of additional Junior DIP financing, plus</p> <p>8 19, plus 4 for the transfer taxes and</p> <p>9 mechanic's liens respectively, plus 17,</p> <p>10 plus 13, minus 39. I see Tom from</p> <p>11 Houlihan with his calculator and he can</p> <p>12 give me a nod if that's the math.</p> <p>13 Q. So I understand all of the</p> <p>14 numbers that you used based on exhibit</p> <p>15 49 in the last paragraph, the 120, the</p> <p>16 19, the 4, the 17, the 13. I don't</p> <p>17 understand the 39. Can you tell me what</p> <p>18 the 39 is?</p> <p>19 A. Sorry. Did I say add 39 at the</p> <p>20 end of that?</p> <p>21 Q. You said subtract 39?</p> <p>22 A. Subtract 39. Okay. So here's,</p> <p>23 again working from memory in this set of</p> <p>24 minutes, I think the 39 would be</p> <p>25 calculated as follows: The purchase</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 price for SHIP was \$60 million. The</p> <p>3 buyer failed to lock down its debt</p> <p>4 financing or equity financing, and that</p> <p>5 transaction was based on feedback from</p> <p>6 the buyer not going to be able to close</p> <p>7 in time.</p> <p>8 From the \$60 million purchase</p> <p>9 price, we had assumed that we were going</p> <p>10 to be paying down secured lenders \$15</p> <p>11 million of those proceeds, which meant</p> <p>12 the benefit to the estate had been \$45</p> <p>13 million.</p> <p>14 However, as part of that</p> <p>15 transaction there was a \$6 million</p> <p>16 deposit in an escrow account. And so we</p> <p>17 were netting that 6 from the 45. And</p> <p>18 again working from memory, I think the</p> <p>19 number that was what it meant for them</p> <p>20 to take the asset or the proceeds, would</p> <p>21 have been \$39 million.</p> <p>22 Q. Okay, understood, thank you.</p> <p>23 That helps.</p> <p>24 When I add the 120, the 19, the 4,</p> <p>25 the 17, the 13 and then subtract the 39,</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 I get \$134 million. And I'm looking to</p> <p>3 the financial advisors to confirm that</p> <p>4 my idiot math is right.</p> <p>5 MR. DIAZ: You need to subtract</p> <p>6 out the cash too.</p> <p>7 MR. FRIEDMANN: May I make a</p> <p>8 suggestion? That if we use -- we</p> <p>9 have documents that go through all of</p> <p>10 this math and that were put together</p> <p>11 at the time and immediately</p> <p>12 thereafter. So rather than</p> <p>13 everybody, lawyers trying to do math</p> <p>14 which is always a fun exercise.</p> <p>15 MR. SORKIN: Dangerous exercise,</p> <p>16 yes.</p> <p>17 MR. FRIEDMANN: If we pull out</p> <p>18 the document we may be able to get a</p> <p>19 more accurate representation of what</p> <p>20 exactly these numbers represent and</p> <p>21 what they all mean.</p> <p>22 Q. With respect to the 153, other</p> <p>23 than the information we've gone through</p> <p>24 in order to get to any additional</p> <p>25 specificity, would you need to look at</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 additional documents?</p> <p>3 A. Yes.</p> <p>4 Q. Why don't we look at the third to</p> <p>5 last paragraph on exhibit 49.</p> <p>6 A. Okay.</p> <p>7 Q. It states "The committee sought</p> <p>8 confirmation that the recommendation of</p> <p>9 Weil, M-III, Lazard and management was</p> <p>10 to pursue the ESL final bid." Do you</p> <p>11 see that?</p> <p>12 A. Yes.</p> <p>13 Q. And the next sentence states that</p> <p>14 "Mr. Meghji stated that while</p> <p>15 administrative solvency could not be</p> <p>16 assured, he agreed." Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. And Mr. Meghji is at M-III,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. The next sentence states "Mr.</p> <p>22 Riecker stated that he believed the</p> <p>23 company's liquidity could be managed and</p> <p>24 he agreed on behalf of management." Do</p> <p>25 you see that?</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. And Mr. Riecker is the CFO and</p> <p>4 part of the office of the CEO of the</p> <p>5 company, correct?</p> <p>6 A. Correct.</p> <p>7 Q. I don't see any information that</p> <p>8 Lazard weighed in or provided a</p> <p>9 recommendation --</p> <p>10 MR. FRIEDMANN: Object to form.</p> <p>11 Q. -- that is reflected in exhibit</p> <p>12 49?</p> <p>13 MR. FRIEDMANN: Same objection.</p> <p>14 A. Yes, I don't see it in this</p> <p>15 particular paragraph. But as I read it</p> <p>16 as you showed it to me, I believe I did</p> <p>17 in the carryover paragraph on the prior</p> <p>18 page.</p> <p>19 Q. So when you say that, are you</p> <p>20 reading "Mr. Aebersold stated that the</p> <p>21 ESL final bid was materially better,"</p> <p>22 that paragraph?</p> <p>23 MR. FRIEDMANN: Take your time.</p> <p>24 A. Sorry. That paragraph in</p> <p>25 conjunction with the paragraph that is</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 one, two, three, four above it.</p> <p>3 Q. Okay. So your recollection is</p> <p>4 that the information contained in the</p> <p>5 two paragraphs you just identified is</p> <p>6 consistent with your recommendation to</p> <p>7 the restructuring committee to pursue</p> <p>8 the ESL final bid?</p> <p>9 A. Generally speaking, I think the</p> <p>10 recommendation had a number of</p> <p>11 components, two of which, which I'm</p> <p>12 heavily relying on other people for that</p> <p>13 input, on the basis of what was provided</p> <p>14 to me and the restructuring committee at</p> <p>15 that time, on that basis, again, input</p> <p>16 from Weil, other advisors, subcommittee</p> <p>17 advisors, we did recommend moving</p> <p>18 forward with the transaction.</p> <p>19 Q. Okay. And when you say two of</p> <p>20 which you are relying on for other</p> <p>21 people, are you indicating relying on</p> <p>22 information from other advisors like</p> <p>23 Weil and the restructuring subcommittee</p> <p>24 and M-III?</p> <p>25 MR. FRIEDMANN: Object to form.</p>



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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Or were you talking about</p> <p>3 information that came from other</p> <p>4 advisors?</p> <p>5 A. Sorry, if you could go back to</p> <p>6 the top of your question, you said to?</p> <p>7 Q. I'm sorry, in your answer, just</p> <p>8 to be clear.</p> <p>9 A. Yes.</p> <p>10 Q. You said "Generally speaking, I</p> <p>11 think the recommendation had a number of</p> <p>12 components, two of which, which I'm</p> <p>13 heavily relying on other people for that</p> <p>14 input." What were those two? I just</p> <p>15 wanted to make sure I understood.</p> <p>16 A. I was probably speaking with too</p> <p>17 much specificity in saying two of which.</p> <p>18 There are a number of which I need input</p> <p>19 from others. The two I was referencing</p> <p>20 in particular there are the notion of</p> <p>21 administrative solvency or solvency and</p> <p>22 being able to meet the conditions to</p> <p>23 close importantly with respect to</p> <p>24 company cash to meet those obligations.</p> <p>25 MR. SORKIN: Understood. We've</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 been going about an hour and a half</p> <p>3 or maybe more, why don't we take a</p> <p>4 break.</p> <p>5 A. Do we need one? I'm just time</p> <p>6 sensitive and so I'm happy to grind</p> <p>7 through. I do have a hard stop this</p> <p>8 afternoon at 5.</p> <p>9 MR. SORKIN: Personally, yes, I</p> <p>10 need a quick break. But, yes.</p> <p>11 (A recess was had.)</p> <p>12 Q. Mr. Aebersold, we talked a little</p> <p>13 earlier about the insolvency analysis</p> <p>14 and you indicated that a lot of what</p> <p>15 Lazard had done was sort of math in</p> <p>16 determining the insolvency analysis.</p> <p>17 I'm going to hand you what was</p> <p>18 previously marked as exhibit 14.</p> <p>19 (Exhibit 14, previously marked</p> <p>20 and shown to witness.)</p> <p>21 Q. And see if you can take a minute</p> <p>22 to look at that email and attachment</p> <p>23 that's contained in exhibit 14 and let</p> <p>24 me know once you've had a chance to</p> <p>25 review it.</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 Q. Okay. What I want to look at,</p> <p>4 you'll see that exhibit 14 is an email</p> <p>5 that went out to a large group of</p> <p>6 advisors and restructuring committee</p> <p>7 members and I believe including yourself</p> <p>8 as part of the Project Blue RX at</p> <p>9 Lazard.com; is that correct?</p> <p>10 A. That should have been.</p> <p>11 Q. And this is an email that went</p> <p>12 out on Wednesday, January 16 at 10:24</p> <p>13 p.m. So just to orient you this is the</p> <p>14 day later that evening, after the bid,</p> <p>15 ESL bid has been accepted but before the</p> <p>16 auction is closed and finalized because</p> <p>17 there were additional -- excuse me --</p> <p>18 because the bid was subject to</p> <p>19 additional documentation. Do you recall</p> <p>20 that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. If you look at the attachment,</p> <p>23 these are discussion materials titled</p> <p>24 Project Blue. Can you tell me what your</p> <p>25 role or Lazard's role was in preparing</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 the discussion materials?</p> <p>3 A. Sure. Lazard's role was to</p> <p>4 aggregate the information and I believe</p> <p>5 we put the presentation together.</p> <p>6 Q. Let's look specifically at slide</p> <p>7 1. And this is Additional Value</p> <p>8 Required is the title of the slide, do</p> <p>9 you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And is it correct to describe</p> <p>12 this slide as representing the amount or</p> <p>13 the value needed to determine or to</p> <p>14 assess administrative solvency?</p> <p>15 A. Yes, I think it's fair to say</p> <p>16 this was a calculation based on input</p> <p>17 from the company and M-III to estimate</p> <p>18 issues with respect to administrative</p> <p>19 solvency.</p> <p>20 Q. And what I want to do, we talked</p> <p>21 earlier about 503(b)(9) claims, I want</p> <p>22 to go through each of the claims and</p> <p>23 understand whether, other than</p> <p>24 aggregating the information and doing</p> <p>25 math, Lazard had any additional input.</p>

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 So let's start on the left side,</p> <p>3 administrative and other priority claims</p> <p>4 uses of value. Do you see that side of</p> <p>5 the slide?</p> <p>6 A. I do.</p> <p>7 Q. And under the admin claims or</p> <p>8 administrative claims, we talked about</p> <p>9 the 503(b)(9) claims already, correct?</p> <p>10 A. Sure.</p> <p>11 Q. The accounts payable, can you</p> <p>12 describe for me what involvement, if</p> <p>13 any, Lazard had in determining whether</p> <p>14 \$196 million was the appropriate amount</p> <p>15 for the accounts payable?</p> <p>16 A. Generally speaking, and I can't</p> <p>17 remember particular to this particular</p> <p>18 build up, relatively limited in terms of</p> <p>19 deriving that number other than probably</p> <p>20 reviewing some schedules that had been</p> <p>21 produced along the way or maybe even the</p> <p>22 day of this. But we certainly didn't</p> <p>23 generate the numbers.</p> <p>24 Q. In terms of reviewing schedules,</p> <p>25 do you remember specific schedules that</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Lazard reviewed, whether it was with</p> <p>3 respect to specifically exhibit 14 or</p> <p>4 generally this type of analysis?</p> <p>5 MR. FRIEDMANN: Object to form.</p> <p>6 A. I can't remember specifically. I</p> <p>7 do know that a number of these line</p> <p>8 items were part of a model that would</p> <p>9 have an Excel schedule or someone would</p> <p>10 give output and send it to us or we'd</p> <p>11 receive the number with backup. I can't</p> <p>12 remember specifically though.</p> <p>13 Q. Do you recall who it was that</p> <p>14 determined the build up to the \$196</p> <p>15 million in accounts payable?</p> <p>16 A. Apologies, your question was who</p> <p>17 in particular?</p> <p>18 Q. Right. What I'm asking is</p> <p>19 whether that was kind of an M-III, an</p> <p>20 M-III and the company, just the company</p> <p>21 or somebody other than Lazard?</p> <p>22 A. I can't be sure but it was</p> <p>23 generally M-III and the company.</p> <p>24 Q. With respect to the property</p> <p>25 taxes, if we go down to that, did Lazard</p>
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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 have any involvement in determining the</p> <p>3 \$135 million included for the property</p> <p>4 taxes?</p> <p>5 A. I can't recall specifically.</p> <p>6 Again, we may have reviewed a schedule</p> <p>7 or had input into it, but we certainly</p> <p>8 didn't lead deriving that number.</p> <p>9 Q. Remainco winddown costs, did</p> <p>10 Lazard have any input into determining</p> <p>11 that number?</p> <p>12 A. I believe this is a number, it's</p> <p>13 an estimate from the M-III analysis.</p> <p>14 This one I can recall over time seeing</p> <p>15 build up schedules to this number. But</p> <p>16 again, I wouldn't say it's our number,</p> <p>17 but I can remember reviewing input into</p> <p>18 that number.</p> <p>19 Q. When you say reviewing input, did</p> <p>20 you review and provide some judgment as</p> <p>21 to what the number should be or whether</p> <p>22 the number was correct?</p> <p>23 MR. FRIEDMANN: Object to form.</p> <p>24 A. I wouldn't classify it as</p> <p>25 judgment as to whether or not it's</p>	<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 correct. I think that we probably</p> <p>3 reviewed schedules as this number was</p> <p>4 being created and likely commented on</p> <p>5 them along the way.</p> <p>6 Q. Did you come up with the</p> <p>7 schedules?</p> <p>8 A. We did not develop the schedules</p> <p>9 that would have supported this.</p> <p>10 Q. Do you remember what makes up the</p> <p>11 Remainco winddown costs?</p> <p>12 A. I can't recall specifically.</p> <p>13 Q. Do you remember generally what</p> <p>14 those categories are, that make up the</p> <p>15 Remainco winddown costs?</p> <p>16 A. In a very general sense, it would</p> <p>17 be the cost to get to a plan of</p> <p>18 reorganization with whatever corpus of</p> <p>19 assets are remaining in the estate,</p> <p>20 excluding professional fees. But again,</p> <p>21 I can't remember specifically what the</p> <p>22 breakdown is.</p> <p>23 Q. With respect to the 503(b)(9)</p> <p>24 claims, the accounts payable and the</p> <p>25 other items listed under the admin</p>

<p style="text-align: right;">Page 98</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 claims, you'll see the next column over</p> <p>3 says Less: ESL Value. Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Can you tell me what involvement</p> <p>6 you had, if any, in negotiating the</p> <p>7 value that ESL would provide in</p> <p>8 connection with each of those claims?</p> <p>9 A. Yes. Lazard certainly had a role</p> <p>10 in the negotiation of the economic terms</p> <p>11 of the transaction. And to the extent</p> <p>12 that these have an economic impact on</p> <p>13 the deal, which these do, we likely</p> <p>14 would have been involved.</p> <p>15 Q. Do you remember or can you</p> <p>16 describe for me how it was that the ESL</p> <p>17 value of \$139 million was arrived at in</p> <p>18 connection with the 503(b)(9) claims?</p> <p>19 A. Not specifically. It was a</p> <p>20 heavily negotiated number when we</p> <p>21 continued to ask them to take more or</p> <p>22 assume more, and they continually pushed</p> <p>23 back to assume less, and the number we</p> <p>24 settled on was 139.</p> <p>25 Q. Was the 139 based on their</p>	<p style="text-align: right;">Page 99</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 assessment of the actual administrative</p> <p>3 claims, or was it simply a result of the</p> <p>4 negotiation and what they were willing</p> <p>5 to do at the end of the day?</p> <p>6 MR. WEAVER: Objection.</p> <p>7 MR. FRIEDMANN: Object to form.</p> <p>8 A. I can't recall specifically but</p> <p>9 it was the outcome of negotiation. And</p> <p>10 I can't speak as to what they thought</p> <p>11 the number was.</p> <p>12 Q. Do you remember ever seeing or</p> <p>13 being provided with an assessment from</p> <p>14 ESL of what the 503(b)(9) claims would</p> <p>15 be?</p> <p>16 A. I can't recall.</p> <p>17 Q. What about with respect to</p> <p>18 accounts payable, is the negotiation</p> <p>19 around that number any different from</p> <p>20 the 503(b)(9) number?</p> <p>21 A. Generally speaking, I don't</p> <p>22 believe so. I do know one component of</p> <p>23 the negotiation around the accounts</p> <p>24 payable is there was a certain amount of</p> <p>25 disputed accounts payable.</p>
<p style="text-align: right;">Page 100</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 So as I sit here today</p> <p>3 recollecting the 166 number, I can</p> <p>4 recall getting more 503(b)(9) claims</p> <p>5 assumed. There was a tension between</p> <p>6 getting those assumed and accounts</p> <p>7 payable assumed because if they're</p> <p>8 disputed accounts payable you</p> <p>9 potentially wouldn't have to pay 100</p> <p>10 cent dollars with respect to all of</p> <p>11 those. And so generally your framework</p> <p>12 that we discussed -- sorry, our</p> <p>13 framework that was a negotiated number</p> <p>14 is the same. I can remember a slight</p> <p>15 distinction between the two.</p> <p>16 Q. Do you have an understanding</p> <p>17 based on the negotiation of the</p> <p>18 mechanism for how 503(b)(9) claims that</p> <p>19 are being assumed, the \$139 million by</p> <p>20 Newco, will be paid?</p> <p>21 A. The mechanism?</p> <p>22 Q. Correct.</p> <p>23 A. I do not.</p> <p>24 Q. What I'm asking more specifically</p> <p>25 is, do you know whether the expectation</p>	<p style="text-align: right;">Page 101</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 is that debtors will pay those 503(b)(9)</p> <p>3 claims and then the estate will be</p> <p>4 reimbursed by Newco, or whether Newco is</p> <p>5 going to pay those claims directly, and</p> <p>6 if so when? When I say the mechanics,</p> <p>7 that's what I'm trying to understand,</p> <p>8 how those actually get paid and who does</p> <p>9 it and when?</p> <p>10 A. I don't know the exact mechanics.</p> <p>11 Again, I was just involved in the</p> <p>12 economic agreement.</p> <p>13 Q. Do you know if there is an</p> <p>14 agreement between ESL and the debtors as</p> <p>15 to how those mechanics will -- as to</p> <p>16 those mechanics with respect to the</p> <p>17 payment of 503(b)(9) claims?</p> <p>18 A. I can't recall.</p> <p>19 Q. Do you know if the APA addresses</p> <p>20 the mechanics of how the 503(b)(9)</p> <p>21 claims will be paid and when by Newco?</p> <p>22 A. Again, not specifically.</p> <p>23 Q. And if I ask you the same</p> <p>24 questions about mechanics with respect</p> <p>25 to accounts payable, do you have any</p>

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2 different understanding about the  
3 mechanics with respect to accounts  
4 payable?  
5 A. Not specifically.  
6 Q. Do you know if a 503(b)(9) claim  
7 or accounts payable claim is not paid  
8 postclose, whether the debtors will  
9 still be liable for that obligation?  
10 A. Not specifically. That's  
11 probably a better question for counsel.  
12 Q. Can you tell me what your  
13 involvement is with respect to  
14 negotiating the specific provisions in  
15 the APA?  
16 A. When you say the specific  
17 provisions, are you talking about the  
18 actual language in the document?  
19 Q. Correct.  
20 A. Our role is conceptual in nature.  
21 We are not wordsmithing and sitting in  
22 on drafting sessions and reviewing every  
23 line of the purchase agreement.  
24 Q. Okay. So your understanding is  
25 the economic terms of the deal with ESL

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2 are that ESL will assume up to \$139  
3 million in 503(b)(9) claims but as to  
4 exactly how that happens and how the  
5 provisions are provided for in the APA,  
6 that's drafting that is done separate  
7 from you; is that correct?  
8 A. The economic deal was for them to  
9 assume \$139 million of 503(b)(9) claims.  
10 Q. If we go to the other category a  
11 little bit lower down on the page, I  
12 want to skip to cure costs. Do you see  
13 that?  
14 A. Yes.  
15 Q. And there is \$200 million in  
16 estimated cure costs and it appears less  
17 ESL value of \$200 million. Is it  
18 correct that your understanding of the  
19 economic terms of the sale to ESL  
20 include ESL assuming up to \$200 million  
21 your costs?  
22 A. Sorry to be so specific.  
23 Q. Sure.  
24 A. I just have this document in  
25 front of me. I can't recall if the cure

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2 cost is an up to cap or they just agreed  
3 to assume the cure costs. I can't weigh  
4 in on that. I know the economic at  
5 least general agreement was for them to  
6 assume the cure costs for assets in  
7 which they're taking.  
8 Q. So your understanding of the  
9 agreement was for ESL to assume the cure  
10 costs, and whether or not there was a  
11 cap is not something you recall?  
12 A. No, that's not to say I don't  
13 recall. Just when you said it, is that  
14 the agreement, I don't know if that  
15 actually is what it said and I can't  
16 recall the specifics about negotiating  
17 that specific point. I just generally  
18 remember cure cost being assumed. But  
19 the specifics around it as to a cap, I  
20 don't recall specifically.  
21 Q. Do you have any recollection of  
22 why \$200 million is included here for  
23 cure costs?  
24 A. I don't specifically.  
25 Q. Was that an estimate based on the

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2 cure costs that was provided by ESL?  
3 A. I'm sorry, I can't recall.  
4 Again, that's an estimate coming from  
5 the company and M-III. Whether or not  
6 ESL had any input or a view, I don't  
7 know.  
8 Q. Do you know which contracts ESL  
9 intends to assume?  
10 A. Not specifically, but a  
11 substantial portion of them.  
12 Q. Are you involved in the  
13 negotiation or determination of which  
14 contracts ESL intends to assume?  
15 A. I am not.  
16 Q. Are you aware that currently  
17 there is a proposal to push off the  
18 hearing on resolution or objection to  
19 cure costs until some time after the  
20 hearing on the sale?  
21 MR. WEAVER: Objection to form.  
22 A. Can you repeat the question?  
23 Q. Sure. If the sale closes -- well  
24 strike that.  
25 What is your understanding of an

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2 expected closing date for the sale  
3 transaction assuming it's approved by  
4 the court?

5 A. February 8th, if that is a  
6 Friday.

7 Q. Yes, February 8th is a Friday.  
8 In the event that cure costs are not  
9 paid in advance of close, and let's for  
10 this discussion assume that's February  
11 8th, who would be responsible for paying  
12 cure costs post-close? Is that the  
13 debtors or ESL?

14 MR. FRIEDMANN: Object to form.

15 A. Again, I think this comes down to  
16 the mechanics of the document which I'm  
17 not that specifically familiar with.

18 Q. Have you seen any liquidity  
19 analysis for the debtors from close  
20 through any period of time in February  
21 -- excuse me -- in 2019?

22 MR. FRIEDMANN: Object to form.

23 A. Sorry, I can't recall  
24 specifically. I know that there have  
25 been longer dated forecasts, but I can't

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2 recall the time at which I saw those or  
3 any specifics.

4 Q. Have you prepared, or has Lazard  
5 prepared, a liquidity forecast for the  
6 debtors from close until any date in the  
7 future?

8 A. I do not believe Lazard has done  
9 so.

10 Q. Do you know if any of the  
11 debtors' advisors have done so?

12 A. I'm not sure.

13 Q. Do you know if --

14 A. Specifically. I know that I've  
15 seen forecasts that go out further that  
16 estimate costs and expenses going  
17 forward which informs some of these  
18 numbers. But I just can't recall  
19 specifically.

20 Q. Have you seen a liquidity  
21 forecast that has been prepared by the  
22 company with respect to the company's  
23 liquidity from close for any date in the  
24 future?

25 A. Let me be more -- have you answer

1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 a question. When you say forecast,  
3 there certainly have been estimates that  
4 we've seen of costs and expenses. I  
5 think that would likely under the term  
6 forecast probably meet that.

7 Q. And those costs and expenses, who  
8 prepared those?

9 A. M-III and the company.

10 Q. And are those different than the  
11 weekly 13-week cash flow forecasts that  
12 are prepared by M-III and the company?

13 A. It's hard to say. I'm sorry, I'm  
14 not trying to be difficult here. But to  
15 say it different, typically these are  
16 embedded in pretty extensive models that  
17 are all integrated. And to get an  
18 output or to run a scenario from that  
19 model, I don't know how you say that  
20 that's somehow different.

21 Q. When you say you recall having  
22 seen forecasts or estimates, are you  
23 thinking about a specific document?

24 A. I'm thinking of output from the  
25 model likely.

1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 Q. And when you saw it, did you see  
3 it on a computer screen, did you see it  
4 on a document?

5 A. I don't recall specifically.

6 Q. But it's not anything that you or  
7 Lazard was asked to do?

8 A. I don't believe Lazard has been  
9 asked to do so.

10 Q. If you go back to exhibit 14,  
11 slide 1, and we go to the right side  
12 now, Additional Value Required. Do you  
13 see that?

14 A. I do.

15 Q. And there if you look at the red  
16 box, that carries over the remaining  
17 claims, the \$356 million of remaining  
18 claims from the left side of the page.  
19 Do you see that?

20 A. I do.

21 Q. And then there's some deducts for  
22 cash or other sources of funds that  
23 would be available to pay that \$356  
24 million. Do you see that?

25 A. I do.

<p style="text-align: right;">Page 110</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. For the first two, company cash</p> <p>3 available at close and company cash</p> <p>4 available post-close, did you or Lazard</p> <p>5 have any involvement in determining what</p> <p>6 makes up those amounts?</p> <p>7 A. Sorry to be more precise. In the</p> <p>8 segregation of the 79 total between the</p> <p>9 two lines?</p> <p>10 Q. In any aspect of it or input into</p> <p>11 the math that Lazard did?</p> <p>12 A. I can't recall specifically.</p> <p>13 Again, I've got a large team working</p> <p>14 with me. They likely had input. I</p> <p>15 can't recall specifically. Or I don't</p> <p>16 know specifically.</p> <p>17 Q. Is it part of Lazard's engagement</p> <p>18 to help the company manage liquidity?</p> <p>19 A. I think we participate in helping</p> <p>20 the company manage liquidity, but I</p> <p>21 wouldn't say that's a primary function.</p> <p>22 Q. As between Lazard and M-III,</p> <p>23 would you agree that M-III, M-III's</p> <p>24 engagement is more focused on helping</p> <p>25 the company manage liquidity than as</p>	<p style="text-align: right;">Page 111</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 compared to Lazard?</p> <p>3 A. I think that's fair.</p> <p>4 Q. If you look down -- strike that.</p> <p>5 If you look in the sort of gold</p> <p>6 box it says Pro Forma Additional Value</p> <p>7 Required and indicates \$62 million. Do</p> <p>8 you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you recall at the time of the</p> <p>11 auction that the advisors' understanding</p> <p>12 of the additional value required to</p> <p>13 address administrative solvency was</p> <p>14 approximately \$62 million?</p> <p>15 A. When you say at the auction can</p> <p>16 you be more specific?</p> <p>17 Q. Sure. This is dated January</p> <p>18 16th. So I'm trying to understand, this</p> <p>19 is \$62 million. I understand that the</p> <p>20 rest of exhibit 14 talks about ways to</p> <p>21 mitigate in some ways that \$62 million.</p> <p>22 What I'm trying to understand is,</p> <p>23 over the course of the auction, was</p> <p>24 there a different number that the</p> <p>25 advisors and the restructuring committee</p>
<p style="text-align: right;">Page 112</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 were considering when they were</p> <p>3 evaluating kind of what do we have to</p> <p>4 address in terms of value to get to</p> <p>5 administrative solvency?</p> <p>6 A. First, the number moved with the</p> <p>7 auction. This number changed as the bid</p> <p>8 changed. But again, I think what this</p> <p>9 represents simply is a calculation of</p> <p>10 input numbers to administrative solvency</p> <p>11 from the debtors' management in M-III.</p> <p>12 At the time of the closing of the</p> <p>13 auction and when this was distributed,</p> <p>14 what this represents here, I'm reading</p> <p>15 it 62 million, I think that's what was</p> <p>16 conveyed to the restructuring committee.</p> <p>17 Q. Did Lazard provide any advice?</p> <p>18 Did you or Lazard provide any advice</p> <p>19 directly to the restructuring committee</p> <p>20 with respect to the company's ability to</p> <p>21 address that \$62 million potential</p> <p>22 shortfall with respect to administrative</p> <p>23 solvency?</p> <p>24 A. Can't comment on whether we gave</p> <p>25 advice generally in terms of the</p>	<p style="text-align: right;">Page 113</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 likelihood. We certainly weren't the</p> <p>3 primary party speaking to whether or not</p> <p>4 that was achievable.</p> <p>5 Q. Do you remember providing any</p> <p>6 advice as to whether or not that was</p> <p>7 achievable to address the \$62 million</p> <p>8 identified on exhibit 14?</p> <p>9 A. Only that the identified</p> <p>10 opportunities that we had reviewed, and</p> <p>11 they were reasonable.</p> <p>12 Q. What did you do to determine that</p> <p>13 the identified opportunities were</p> <p>14 reasonable?</p> <p>15 A. We reviewed schedules from the</p> <p>16 company and M-III, which derived the</p> <p>17 opportunity list that they talked with</p> <p>18 the restructuring committee about and</p> <p>19 asked questions. We were familiar with</p> <p>20 the schedules.</p> <p>21 Q. In terms of opportunities, if you</p> <p>22 can turn to slide 3, slide 3 in exhibit</p> <p>23 14 is entitled Incremental Sources of</p> <p>24 Value &amp; Risks. Do you see that?</p> <p>25 A. I do.</p>

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 Q. Are those opportunities to  
3 address the -- to potentially address  
4 the \$62 million?  
5 A. They are certain of the  
6 enumerated opportunities that were  
7 identified at that time.  
8 Q. At the time of the auction do you  
9 recall, and take a minute to look at  
10 slide 3 -- at the time of the auction do  
11 you remember any opportunities that were  
12 identified or provided to the  
13 restructuring committee other than  
14 what's included on slide 3?  
15 A. Not specifically, but there was a  
16 conversation, of which we were only  
17 tangentially involved, of identifying  
18 opportunities and risks. And I can't  
19 recall specifically if these lists were  
20 exhaustive. But it was a -- there was a  
21 fairly lengthy discussion on this topic  
22 and there were certain -- certainly  
23 management had other ideas how to  
24 improve upon this. And in fairness,  
25 people also identified risks associated

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 with it, I think represented by the TBD.  
3 I can't speak to whether this was  
4 exhaustive at that point in time. This  
5 is what the page reflects.  
6 Q. So what I'm asking specifically  
7 is other than the list that's identified  
8 on slide 3, and let's talk about first  
9 potential incremental sources, do you  
10 remember any incremental sources that  
11 were discussed with the restructuring  
12 committee at the time of the auction?  
13 A. I can't recall specifically.  
14 Q. With respect to risks to  
15 proceeds, other than the three that are  
16 identified, one of which being other  
17 TBD, do you remember any specific  
18 additional risks that were discussed  
19 with the restructuring committee at the  
20 time of the auction?  
21 A. I can't recall the specifics. I  
22 do know that other risks were noted.  
23 Q. Just specifically what they were,  
24 you don't recall?  
25 A. I can't recall the specifics.

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 Q. Since the time of the auction,  
3 what has Lazard's role been in trying to  
4 achieve or act on the opportunities  
5 identified as potential incremental  
6 sources, whether on this list or  
7 otherwise?  
8 A. As most of them are operational  
9 in nature, not significantly.  
10 Q. Who as to your understanding, who  
11 is it that is primarily responsible for  
12 trying to act on the opportunities  
13 identified in potential -- as potential  
14 incremental sources of funding?  
15 A. I think it's a collective effort  
16 amongst all the advisors. But I would  
17 think in terms of the laboring oar is  
18 shared between M-III and management of  
19 the debtors.  
20 Q. Is there any one you can think of  
21 Lazard being involved in directly?  
22 A. Of the items listed here on page  
23 3, I wouldn't say that Lazard has the  
24 laboring oar on any of them. Not to say  
25 we have no involvement. But again, it's

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 not -- we're not leading those efforts.  
3 Q. Are there any, other than those  
4 listed on slide 3, that Lazard has the  
5 laboring oar in terms of potential  
6 incremental sources to address the  
7 potential administrative solvency  
8 shortfall of the debtors?  
9 A. In terms of implementation? I'm  
10 not sure.  
11 Q. You don't know one way or the  
12 other, or you don't think Lazard is?  
13 A. In terms of implementing, I don't  
14 -- I can't think of any.  
15 Q. With respect to managing  
16 potential risks by which the  
17 administrative solvency shortfall could  
18 grow, can you think of any involvement  
19 that Lazard has in terms of primary  
20 responsibility for managing those  
21 potential risks?  
22 A. Yes, I don't think it would be  
23 fair to say -- I can't think of anywhere  
24 we are managing the implementation.  
25 Q. At the time of the auction,

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 whether it was the exact administrative  
3 solvency analysis and description of it  
4 -- strike that.

5 At the time of the auction, so  
6 we're talking January 14-January 17, who  
7 was it, as between the advisors, who was  
8 primarily responsible for presenting to  
9 the restructuring committee the  
10 potential additional value that would be  
11 required to address an administrative  
12 shortfall -- administrative solvency  
13 shortfall?

14 A. I think generally speaking,  
15 Lazard would have presented the slide  
16 that we are walking through now.  
17 However, due to the fact a lot of the  
18 numbers are input from management, M-III  
19 and also input from Weil, it was  
20 certainly a collective effort. But I  
21 probably believe Lazard, including me,  
22 would have likely introduced the page  
23 and initiated the conversation.

24 Q. At the auction did you express a  
25 view to the restructuring committee

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 about whether the potential  
3 administrative solvency shortfall was a  
4 risk that was achievable, in other  
5 words, it could be managed?

6 MR. WEAVER: Objection to form.

7 A. I'll look back to the minutes.  
8 Could I do that?

9 Q. Sure.

10 A. I guess this is exhibit 49. I  
11 think this generally reflects my  
12 statement that I made to the  
13 restructuring committee.

14 Q. And which statement are you  
15 referring to in exhibit 49?

16 A. On the second page, the fifth  
17 full paragraph, in conjunction with the  
18 paragraph at the bottom of the page that  
19 has the carryover.

20 Q. So you think what is reflected in  
21 those two paragraphs of exhibit 49  
22 accurately reflects the information you  
23 provided to the restructuring committee  
24 with respect to administrative solvency?

25 A. Yes, although the 87 million

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 doesn't ring a bell with me sitting here  
3 today. I'm not sure that that's the  
4 number that I represented to the  
5 committee.

6 Q. Do you remember specifically what  
7 the number was?

8 A. If I'm not mistaken, the number  
9 that we discussed on the call or meeting  
10 that evening is reflected in exhibit 14,  
11 which is the \$62 million number.

12 Q. Can I ask you going back to slide  
13 49 -- exhibit 49, the fourth paragraph,  
14 the fourth full paragraph on page 2, the  
15 last sentence states, "Mr. Aebersold  
16 expressed disappointment however with  
17 the ESL final bid."

18 Do you see that?

19 A. In the fifth paragraph?

20 Q. The fifth paragraph on the page,  
21 the fourth full paragraph?

22 A. I think that's the fifth full  
23 paragraph.

24 Q. I believe it might be the  
25 redactions, I grouped those. So yes the

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 fifth full paragraph, last sentence  
3 states, "Mr. Aebersold expressed  
4 disappointment however with the ESL  
5 final bid."

6 Do you see that?

7 A. I do.

8 Q. Do you remember what the  
9 disappointment was that you expressed?

10 A. Not specifically. But I'm a  
11 competitive person and I always want to  
12 do better.

13 Q. Was it with the -- do you  
14 remember generally, was it with the cash  
15 that was being provided to the debtors  
16 that you were disappointed? Was it with  
17 respect to what liabilities were being  
18 assumed? Do you remember generally what  
19 the disappointment was?

20 MR. WEAVER: Object to the form.

21 A. I think generally speaking, I was  
22 disappointed that on behalf of the  
23 debtors I couldn't do better. And that  
24 is not unique to this case.

25 Q. If we look again at exhibit 14,



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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 slide 1, there is a line that refers to  
3 KCD royalties, there's a memo.  
4 A. That's on page 1.  
5 Q. Yes. There's \$112 million number  
6 associated with KCD royalties, do you  
7 see that?  
8 A. I do.  
9 Q. What is your understanding, if  
10 any, with respect to the \$112 million  
11 number reflected next to KCD royalties?  
12 A. Sorry, can you repeat the  
13 question? I was reading.  
14 Q. Sure. Do you understand what the  
15 KCD royalties category is?  
16 A. Generally speaking, yes.  
17 Q. Can you describe for me what that  
18 is?  
19 A. It's the KCD IP is an entity that  
20 holds the KCD IP. And the company makes  
21 payments, the debtors make payments to  
22 that entity on behalf of the usage of  
23 the KCD IP.  
24 Q. And do you know what the \$112  
25 million is?

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 obligations either by Newco or by the  
3 debtors?  
4 A. Do I have?  
5 Q. Do you have any understanding  
6 about whether or not the APA addresses  
7 the \$112 million associated with the KCD  
8 royalties as reflected on slide 1 of  
9 exhibit 14?  
10 A. I can't recall a specific  
11 reference to these royalty payments.  
12 Q. Are you aware of any analysis --  
13 strike that.  
14 What is the outside date by which  
15 a sale to ESL must close?  
16 MR. FRIEDMANN: Object to form.  
17 A. I can't be certain. I believe it  
18 is January 18th.  
19 Q. Did you mean February?  
20 A. Sorry, February 16th or 18th,  
21 around that general time frame.  
22 Q. The exact date would be addressed  
23 by the APA; is that correct?  
24 A. That's correct.  
25 Q. Whatever that date might be, are

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 A. Reading footnote 3, it says  
3 "Assumes" 120 -- sorry -- "\$112 million  
4 of post-petition royalties owed to KCD  
5 based on preliminary and ongoing  
6 analysis conducted by M-III; figures  
7 subject to change."  
8 Q. Did you have any involvement in  
9 determining the \$112 million?  
10 A. In determining the number?  
11 Q. Yes, and understanding what went  
12 into or made up the \$112 million?  
13 A. I think I asked for the number  
14 but I certainly didn't come up with the  
15 number.  
16 Q. And do you have any understanding  
17 separate from discussions with counsel  
18 about whether or not that \$112 million  
19 will need to be paid by the debtors'  
20 estate?  
21 MR. FRIEDMANN: Object to form.  
22 A. Not separate from counsel.  
23 Q. And do you have any understanding  
24 about how the APA treats the KCD royalty  
25 payments, if at all, in terms of

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 you aware of any analysis that anyone at  
3 the debtors has performed about the  
4 impact in terms of the additional cost  
5 to the estates if there is a delay in  
6 closing beyond February 8th until the  
7 last date of close, or the last  
8 potential date of close under the APA?  
9 A. I didn't recall specifically when  
10 you asked that question, but having  
11 reviewed exhibit 14 when you handed it  
12 to me, I did recall seeing a schedule in  
13 the back of that that actually reflected  
14 both the February 8th date and the  
15 February 16th date. And it would appear  
16 that this touches on that impact.  
17 Q. What --  
18 A. Again, I would need more time to  
19 review it.  
20 Q. What involvement, if any, did  
21 Lazard have in preparing, other than  
22 just simply compiling, the information  
23 in slide 7?  
24 A. This one is a schedule. Again,  
25 I'm trying to be helpful and recall. I

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 believe this is a schedule from M-III  
3 that we just had reformatted.  
4 Q. And if you look at the schedule,  
5 it's titled incremental sources of value  
6 and risks ABL detail. Do you see that?  
7 A. Yes, I do.  
8 Q. Underneath it states "The  
9 following provides further detail into  
10 the ABL projections and potential  
11 avenues to reduce the balance at close  
12 identified by M-III." Do you see that?  
13 A. Yes.  
14 Q. Having read that, do you  
15 understand that this chart on slide 7 of  
16 exhibit 14 actually reflects what might  
17 happen with respect to achieving  
18 opportunities in the event of a delay to  
19 closing, as opposed to an analysis of  
20 the cost to the company of a delay to  
21 closing?  
22 A. I'm sorry, you're going to have  
23 to help me with that one. Can you  
24 repeat the question.  
25 Q. Sure. If I look at slide 7, is

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 there anywhere on slide 7 that I can  
3 look to and understand the cost to the  
4 debtors of a delay beyond February 8th,  
5 a delay in closing beyond February 8th?  
6 A. Well that's a complicated  
7 question. I do not see a line that says  
8 cost to the debtors. I don't see that  
9 on the page.  
10 Q. Based on the information that is  
11 in slide 7 of exhibit 14, can you  
12 sitting here determine the cost to the  
13 debtors of a delay in closing?  
14 A. I cannot.  
15 Q. Are you aware of any analysis  
16 that you've seen that would provide the  
17 information of a cost to the debtors to  
18 a delay in closing beyond February 8th?  
19 A. Well similarly when I was asked  
20 that question before and I reflected  
21 this, this is an input into that cost  
22 and an indication --  
23 Q. Have you seen an analysis that  
24 aggregates the inputs into that cost so  
25 that I could look to it and know if it

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 closes on February 11th it will cost the  
3 debtors' estate an additional call it \$6  
4 million, if it closes on February 12th  
5 it will cost the debtors's estate an  
6 additional \$12 million, anything that  
7 actually aggregates the costs that I  
8 would be able to look to and the judge  
9 would be able to look to to understand  
10 what the cost to the estate is of a  
11 delay in closing beyond February 8th?  
12 A. Can't recall specifically.  
13 Q. If that exists, is that something  
14 that Lazard is responsible for  
15 preparing?  
16 A. In terms of preparation, we would  
17 not be the one deriving the inputs. Is  
18 that helpful?  
19 Q. That is helpful.  
20 A. Okay.  
21 Q. Are you aware of any analysis  
22 performed by any of the debtors or any  
23 of their professionals with respect to  
24 how any additional costs that would  
25 result from a delay in closing would be

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 funded?  
3 A. I can't recall any.  
4 Q. Is that something that Lazard is  
5 responsible for or has primary  
6 responsibility for?  
7 A. That is not something for which  
8 we have primary responsibility.  
9 Q. In the event that there is a  
10 delay in closing, what assets would the  
11 debtor have access to fund the costs  
12 associated with such a delay?  
13 MR. FRIEDMANN: Object to form.  
14 A. I'm not certain. I'd need to see  
15 a schedule of those assets, the cash  
16 flows. Again, I don't have a schedule  
17 in front of me outlining those.  
18 Q. Do you have a or have you seen a  
19 current sources and uses that shows what  
20 funds will come into the debtors at  
21 close in terms of forms of  
22 consideration, of whatever forms those  
23 might be, and how that consideration  
24 will be used to pay for the assets that  
25 will leave the debtors' estate?

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 A. I had you halfway through. I'm  
3 sorry. Can you repeat that.  
4 Q. Do you know what a sources and  
5 uses chart is?  
6 A. I do.  
7 Q. What is a sources and uses chart?  
8 A. It's actually a more difficult  
9 question than just what is a sources and  
10 uses. But typically it's comparing the  
11 sources of value to uses of value in a  
12 transaction and the two sides should be  
13 equal.  
14 Q. Have you seen a sources and uses  
15 chart that describes at close in a sale  
16 to ESL the sources that will come into  
17 the debtors' estates and the associated  
18 uses that will equal each other?  
19 A. We've seen sources and uses. But  
20 as this presentation that is exhibit 14  
21 would indicate, there's a shortfall in  
22 terms of them balancing.  
23 Q. Have you seen any schedule that  
24 shows, in the event there's a shortfall,  
25 what assets the debtor will have to fund

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 that shortfall?  
3 A. I'm sorry. The question is  
4 complicated because you're saying  
5 there's a shortfall that you can't make  
6 payments and then asking --  
7 Q. Let me make it a little simpler  
8 because I'm combining a couple of things  
9 I recognize. So let me ask the first  
10 thing much more simply.  
11 Have you seen a sources and uses  
12 chart that shows, assuming a February  
13 8th close, what sources come in and what  
14 those sources will be used for?  
15 A. I have seen a sources and uses  
16 with respect to this transaction.  
17 Q. Did you prepare that?  
18 A. I personally did not prepare it.  
19 Q. Who did?  
20 A. Well again, it's a complicated  
21 transaction. It's a group effort  
22 amongst the company and all of its  
23 advisors.  
24 Q. And who had primary  
25 responsibility?

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 A. For which aspect?  
3 Q. For any aspect.  
4 MR. FRIEDMANN: Object to form.  
5 A. It depends on what the input is.  
6 I mean there's multiple inputs  
7 obviously. And so, there's a number of  
8 variables. So it would depend on which  
9 variable in terms of which party would  
10 be providing it.  
11 Q. Do you know how much cash will  
12 come into the debtors at close assuming  
13 a February 8th close date?  
14 A. Not precisely.  
15 Q. Do you understand roughly, order  
16 of magnitude what it might be?  
17 A. Well, it depends on a few  
18 variables in terms of how the closing  
19 looks. I mean I can give a range. It  
20 would be pretty wide.  
21 Q. Okay, what's the range?  
22 A. 885 million upwards to a  
23 significantly higher amount.  
24 Q. And what are the variables?  
25 A. Well, I'm sorry, I don't want to

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 get overcomplicated because the  
3 mechanics in the APA are complicated. I  
4 specifically don't know.  
5 Q. Let me ask it a little  
6 differently maybe to avoid a  
7 complication. Do you know how much cash  
8 will come into the company at close and  
9 that will remain at the company a week  
10 after close?  
11 MR. WEAVER: Object to form.  
12 A. I do not know.  
13 Q. Do you have any understanding of  
14 the amount of cash that will come in at  
15 close and that will remain at the  
16 company for any period beyond the close?  
17 MR. WEAVER: Objection to form.  
18 A. I do not specifically.  
19 Q. And are some of the variables  
20 things like depending on whether or not  
21 certain of the debt that is held by  
22 parties other than ESL is bought out by  
23 ESL prior to close; is that one of the  
24 variables you're thinking of?  
25 A. Yes. To give a specific answer,

<p style="text-align: right;">Page 134</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 I believe how the APA works is it's</p> <p>3 either going to be, debt will be credit</p> <p>4 bid or cash consideration will be paid</p> <p>5 to do so. So you're right, that's --</p> <p>6 Q. That's one of the considerations?</p> <p>7 A. Yes.</p> <p>8 Q. In addition to considerations</p> <p>9 with respect to the credit bid</p> <p>10 component, are there other variables</p> <p>11 that you were thinking of?</p> <p>12 A. That's the one I was thinking of.</p> <p>13 I can't sitting here today think of the</p> <p>14 other variables.</p> <p>15 Q. Are you aware that in early</p> <p>16 January an advisor to the debtors, I</p> <p>17 believe it was M-III, estimated that the</p> <p>18 daily cash burn of the company was about</p> <p>19 six and a half million dollars a day?</p> <p>20 A. I can't recall that specifically.</p> <p>21 MR. SORKIN: Let me take a very</p> <p>22 short break to clarify something. We</p> <p>23 can go off the record.</p> <p>24 (A recess was had.)</p> <p>25 (Exhibit 18, previously marked</p>	<p style="text-align: right;">Page 135</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 and shown to witness.)</p> <p>3 Q. Mr. Aebersold, I'm going to hand</p> <p>4 you what was previously marked as</p> <p>5 exhibit 18. If you could take a minute</p> <p>6 to look at that document and let me know</p> <p>7 once you've had a chance to review it.</p> <p>8 Mr. Aebersold, have you seen</p> <p>9 exhibit 18 before?</p> <p>10 A. Yes, I have.</p> <p>11 Q. Do you know what it is?</p> <p>12 A. Yes, generally it's the -- a</p> <p>13 document that M-III puts together to</p> <p>14 track certain conditions precedent to</p> <p>15 closing.</p> <p>16 Q. When you say certain conditions</p> <p>17 precedent to closing, are you referring</p> <p>18 specifically to page 3 of exhibit 18?</p> <p>19 A. I was speaking more generally,</p> <p>20 but that does -- it is entitled</p> <p>21 Conditions to Close Summary, so fair</p> <p>22 point.</p> <p>23 Q. Does slide 2 reflect conditions</p> <p>24 to closing?</p> <p>25 A. It doesn't reflect conditions to</p>
<p style="text-align: right;">Page 136</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 closing, it reflects factors on the</p> <p>3 ability to close.</p> <p>4 Q. What input, if any, does Lazard</p> <p>5 have into preparing -- or did Lazard</p> <p>6 have into preparing exhibit 18?</p> <p>7 A. We did not prepare exhibit 18.</p> <p>8 However, this is a document that -- this</p> <p>9 template is produced multiple times a</p> <p>10 week for the restructuring committee.</p> <p>11 And we had commented on the template</p> <p>12 which is updated for the benefit of the</p> <p>13 restructuring committee.</p> <p>14 Q. With respect to slide 2, which is</p> <p>15 titled Admin Solvency Tracker, do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. What responsibility does Lazard</p> <p>19 have, if any, in tracking the items</p> <p>20 identified in the admin solvency tracker</p> <p>21 on slide 2?</p> <p>22 A. We're not materially involved in</p> <p>23 tracking these numbers.</p> <p>24 Q. With respect to slide 4 which</p> <p>25 identifies the number of Opportunity and</p>	<p style="text-align: right;">Page 137</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Actions as of 1/25/19, does Lazard have</p> <p>3 any primary responsibility for managing</p> <p>4 the opportunities and actions identified</p> <p>5 on slide 4?</p> <p>6 A. Give me a second, let me read</p> <p>7 through these. Sorry, can you repeat</p> <p>8 the question?</p> <p>9 Q. Sure. I'm just wondering if any</p> <p>10 of these opportunities that are</p> <p>11 identified on slide 4 fall into sort of</p> <p>12 Lazard's realm of responsibility in</p> <p>13 terms of managing?</p> <p>14 A. We're not directly involved in</p> <p>15 implementing and are not listed as a</p> <p>16 responsible party on the document.</p> <p>17 Q. Are you involved in negotiating</p> <p>18 with any third party with respect to</p> <p>19 managing liquidity issues at the</p> <p>20 company? So, for example, the last item</p> <p>21 at the bottom of the page on slide 4 is</p> <p>22 First Data Proceeds. My understanding</p> <p>23 is that's a deposit that's currently</p> <p>24 held by the credit card processor.</p> <p>25 So that would be an example of an</p>

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 opportunity to negotiate with a third  
3 party to manage an opportunity here.  
4 If you want to take a minute to  
5 look at these. Is Lazard responsible  
6 for negotiating with any third parties  
7 in connection with the information on  
8 slide 4?  
9 MR. FRIEDMANN: Object to form.  
10 A. Lazard is currently not  
11 responsible for the direct negotiation  
12 of the items listed here.  
13 Q. If you look at other assets on  
14 slide 4, just below the middle of the  
15 page under the potential actions it  
16 states "\$245 million of other balance  
17 sheet assets," and then in the comments  
18 it states, "Other assets on the balance  
19 sheet not identified in the APA." Do  
20 you see that?  
21 A. I see that.  
22 Q. Do you know what the \$245 million  
23 of assets is?  
24 A. I do not.  
25 Q. Are you aware of \$245 million of

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 assets on the balance sheet that the  
3 debtors might be able to use to address  
4 any administrative solvency shortfall?  
5 A. I am not.  
6 Q. Do you know whether the \$245  
7 million of other assets on the balance  
8 sheet, to the extent it exists, is  
9 intended to -- excuse me -- will be  
10 acquired by Newco postclose?  
11 MR. FRIEDMANN: Object to form.  
12 A. I do not know.  
13 Q. You mentioned earlier that one of  
14 the things you were considering were  
15 costs that the debtor would need to  
16 address in order to achieve a closing.  
17 Are there currently any costs that  
18 you can identify that you're aware of  
19 that lead you to the belief that the  
20 debtors might not be able to close on  
21 the sale to ESL?  
22 A. Can you repeat that?  
23 Q. Sure. Are you aware -- we talked  
24 earlier about cash to close the  
25 transaction. Do you recall that?

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. Are you aware of any -- strike  
4 that.  
5 Is it your understanding that, if  
6 there is a close on February 8th, the  
7 debtors will have sufficient cash to  
8 close the transaction?  
9 A. Is it my understanding?  
10 Q. Yes. Do you have an  
11 understanding that, if there is a close  
12 on February 8th, the debtors will have  
13 sufficient cash to close the  
14 transaction?  
15 A. I don't know. I would say there  
16 remains uncertainty. But according to  
17 the debtors' management and individuals  
18 at M-III who are closer to the numbers,  
19 they still express confidence that the  
20 company will be able to achieve it.  
21 Q. But M-III and members of debtors'  
22 management are closer to those numbers  
23 than you are?  
24 A. Yes, in terms of the liquidity  
25 profile or forecasting the DIP and

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 inventory, yes.  
3 Q. Are you aware of how much the  
4 debtors will owe at close in terms of  
5 payroll obligations?  
6 A. I am not.  
7 Q. Do you know whether the APA  
8 requires ESL or Newco to take on the  
9 payroll obligations that the debtors  
10 have at close?  
11 A. Not specifically.  
12 Q. If I were to tell you that,  
13 according to Mr. Meghji, there will be  
14 approximately \$30 to \$40 million in  
15 payroll obligations that the debtors  
16 will have to pay at close, would that  
17 surprise you?  
18 MR. FRIEDMANN: Object to form.  
19 A. Sorry. Are you representing that  
20 his testimony was that the debtors would  
21 be liable for 30 some-odd million  
22 dollars of payroll?  
23 Q. \$30 to \$40 million in payroll.  
24 A. Well I guess that's his  
25 testimony.

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 Q. Are you aware of negotiations  
3 between the debtors and ESL as to how  
4 they will address the payroll  
5 obligations that currently sit with the  
6 debtors and are not being assumed by  
7 Newco of roughly \$30 to \$40 million at  
8 closing?  
9 A. I'm not.  
10 Q. Before today, had you heard about  
11 any potential unresolved issue with  
12 respect to how the debtors would pay the  
13 \$30 to \$40 million of payroll  
14 obligations at closing?  
15 A. Not specifically.  
16 Q. Do you know under the APA whether  
17 Newco will assume any employee benefits  
18 obligations that the debtors have with  
19 respect to obligations that arise  
20 preclosing?  
21 A. Sorry for having to do this.  
22 Could you repeat the first part of that  
23 question?  
24 Q. Sure. You understand that one of  
25 the things debtors do, or these debtors

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 do is pay benefits to employees,  
3 correct, things like healthcare?  
4 A. Yes.  
5 Q. Other stuff like that. You're  
6 aware that some of the debtors' plans  
7 are self-insured plans, correct?  
8 A. Yes.  
9 Q. And you're aware that under those  
10 self-insured plans, costs may be  
11 incurred with respect to employees  
12 incurring costs that the debtors are  
13 obligated to pay and those obligations  
14 arise preclose, but that those costs  
15 might not become known until postclose;  
16 does that make sense?  
17 MR. FRIEDMANN: Object to form.  
18 A. It makes sense.  
19 Q. Are you aware of any estimate as  
20 to what those obligations might be?  
21 A. I'm not the right person to speak  
22 to that.  
23 Q. Do you know if those obligations  
24 are accounted for anywhere in the admin  
25 solvency tracker in slide 18 -- or

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 excuse me, exhibit 18?  
3 A. I am not generally. If you'd  
4 like me to read the entire document  
5 here, I will, but.  
6 Q. You don't need to. If you're not  
7 responsible for maintaining this and  
8 it's better to talk to M-III or someone  
9 else, then that's fine.  
10 A. That's correct.  
11 Q. Okay. With respect to the  
12 deposit, or excuse me, strike that.  
13 With respect to the \$6 million  
14 deposit in connection with the SHIP sale  
15 that did not happen, do you have an  
16 understanding of who owns that \$6  
17 million?  
18 A. My understanding is that it's in  
19 escrow.  
20 Q. Do you know whether the debtors  
21 have a legal entitlement to that \$6  
22 million?  
23 MR. WEAVER: Objection to form.  
24 MR. FRIEDMANN: Object to form.  
25 A. I think with the lead-in "legal

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 entitlement" may be a cue to me that  
3 that's probably privileged and my view  
4 on that would be informed by the view of  
5 counsel.  
6 Q. So I'm actually not asking that.  
7 Do you have an understanding -- I'll ask  
8 it differently then. Do you have an  
9 understanding of whether there is a  
10 dispute with respect to who owns that \$6  
11 million?  
12 A. I don't know that there's a  
13 dispute as to who owns it. I think  
14 there is a dispute in terms of the  
15 release of that from the escrow.  
16 Q. Is it your understanding that the  
17 potential purchaser of SHIP is disputing  
18 whether the \$6 million should be  
19 released to debtors?  
20 A. I understand that they are trying  
21 to not have it released.  
22 Q. But your understanding currently  
23 is that that \$6 million is in escrow,  
24 not in the debtors' accounts?  
25 A. That's correct.

<p style="text-align: right;">Page 146</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is it your understanding that</p> <p>3 under the proposed asset purchase</p> <p>4 agreement, ESL will ultimately assume</p> <p>5 the warranty and protection agreement</p> <p>6 liabilities from the debtors?</p> <p>7 A. I think you're blending two</p> <p>8 concepts there.</p> <p>9 Q. Is it your understanding that</p> <p>10 under the APA, ESL will assume the</p> <p>11 protection agreement liabilities from</p> <p>12 the debtors upon close?</p> <p>13 A. Yes, that is my understanding.</p> <p>14 Q. Do you know if there are any</p> <p>15 conditions that need to be met prior to</p> <p>16 ESL's assumption of those liabilities?</p> <p>17 MR. FRIEDMANN: Object to form.</p> <p>18 A. Not specifically.</p> <p>19 Q. Do you know whether those --</p> <p>20 whether or not those liabilities will</p> <p>21 only be assumed after there is a</p> <p>22 transfer of the KCD notes which requires</p> <p>23 consent from the applicable Bermuda</p> <p>24 regulatory authority?</p> <p>25 MR. WEAVER: Objection to form.</p>	<p style="text-align: right;">Page 147</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. Bear with me. Let me think it</p> <p>3 through.</p> <p>4 Q. Sure.</p> <p>5 A. Okay. To me that's a mechanical</p> <p>6 point of what entity they're using to</p> <p>7 assume those liabilities, and those</p> <p>8 liabilities currently reside at Sears</p> <p>9 Re. And so I guess they are bringing</p> <p>10 you back on balance sheet. But again,</p> <p>11 that's a mechanical point that I wasn't</p> <p>12 involved in.</p> <p>13 Q. But your understanding is, in</p> <p>14 terms of generally the terms, that upon</p> <p>15 close, ESL will assume the liabilities</p> <p>16 with respect to the protection</p> <p>17 agreements?</p> <p>18 A. Generally speaking, yes.</p> <p>19 Q. And do you know if there is any</p> <p>20 -- strike that.</p> <p>21 Do you know if ESL or Newco will</p> <p>22 reimburse the debtors for any payments</p> <p>23 that are made in connection with</p> <p>24 servicing those protection agreement</p> <p>25 liabilities postclose?</p>
<p style="text-align: right;">Page 148</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 A. Not specifically.</p> <p>3 Q. Again, is that a mechanic's issue</p> <p>4 in terms of how they are paid, whether</p> <p>5 it's a reimbursement or an out of pocket</p> <p>6 for Newco?</p> <p>7 A. I think so.</p> <p>8 Q. Are you aware of a provision in</p> <p>9 the asset purchase agreement that allows</p> <p>10 ESL or Newco to pay the liabilities its</p> <p>11 assuming, including 503(b)(9) claims and</p> <p>12 accounts payable, at some point in the</p> <p>13 future, the shorter of, or excuse me,</p> <p>14 the outside date of 120 days or a plan</p> <p>15 of confirmation?</p> <p>16 A. Not specifically. But could you</p> <p>17 go back and read which claims you listed</p> <p>18 there?</p> <p>19 Q. I listed 503(b)(9) claims and</p> <p>20 accounts payable, among others. I'm not</p> <p>21 sure if it's exclusively those.</p> <p>22 A. I can't comment on the specifics.</p> <p>23 I remember a conversation in</p> <p>24 negotiations about, around that point,</p> <p>25 but I'm not familiar with the specifics</p>	<p style="text-align: right;">Page 149</p> <p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 sitting here today.</p> <p>3 Q. And to the extent any obligation</p> <p>4 arises between close and whatever date</p> <p>5 in the contract that is, whether it's 10</p> <p>6 days, confirmation, or some other date,</p> <p>7 do you have an understanding about who</p> <p>8 is responsible for paying those</p> <p>9 obligations, the debtors versus ESL?</p> <p>10 A. For the assumed liabilities that</p> <p>11 you're mentioning.</p> <p>12 Q. Correct.</p> <p>13 A. My understanding is that ESL</p> <p>14 would be paying those.</p> <p>15 Q. But as to how that happens, that</p> <p>16 would be in the mechanics' world?</p> <p>17 A. I believe so.</p> <p>18 Q. Did Lazard review ESL's business</p> <p>19 plan with respect to Newco?</p> <p>20 A. Could you put some definition</p> <p>21 around review?</p> <p>22 Q. Sure. Strike that. Let me ask</p> <p>23 it differently. Have you seen a</p> <p>24 business plan from ESL for Newco?</p> <p>25 A. I've seen a summary business</p>

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 plan.  
3 Q. When did you first see that?  
4 A. And this is with respect to ESL's  
5 business plan?  
6 Q. Correct.  
7 A. If memory serves me correctly, it  
8 was in early January before the auction.  
9 Q. Did Lazard do anything to analyze  
10 the business plan?  
11 A. Analyze is tricky. I can tell  
12 you that we had been to sessions where  
13 management presented its business plan  
14 and had been a part of discussions  
15 around the development of that business  
16 plan, which I understand to be the basis  
17 on which ESL created its business plan.  
18 So did we independently analyze  
19 and diligence it as if we were a buyer?  
20 Not that extensive level of diligence,  
21 no.  
22 Q. What, if anything, did Lazard do  
23 with respect to reviewing or evaluating  
24 ESL's proposed business plan?  
25 A. Other than attend a meeting and

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 ask general questions?  
3 Q. Correct.  
4 A. Not with respect to analyzing the  
5 business plan.  
6 Q. Did Lazard provide any advice to  
7 the restructuring committee or the  
8 restructuring subcommittee with respect  
9 to ESL's business plan?  
10 A. I don't recall doing so, other  
11 than there were questions about the  
12 liquidity for Newco, as you refer to it.  
13 Q. And when you say the liquidity  
14 for Newco, can you tell me what you  
15 mean?  
16 A. Again, it was just -- I can  
17 remember distinctly getting the question  
18 and it related to the availability on  
19 their new financing and the implications  
20 of the summary business plan that we had  
21 received, I think we were asked a  
22 question in conjunction with management,  
23 M-III how Newco's liquidity would look  
24 rolling forward, and I think I responded  
25 with a question, the question to the

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 availability under their new ABL  
3 facility.  
4 Q. That you provided a response to  
5 --  
6 A. A question.  
7 Q. -- a question with respect to how  
8 much availability there would be under  
9 the new ABL facility?  
10 A. Yes.  
11 Q. At a particular time in the  
12 future, or at close?  
13 A. I think it was at close, if I  
14 remember correctly.  
15 Q. Do you remember who asked that  
16 question?  
17 A. I don't specifically. I think it  
18 was -- it was a member of the  
19 restructuring committee.  
20 Q. Do you remember whether that was  
21 during the auction?  
22 A. I think it was -- I can't recall  
23 specifically. I apologize.  
24 Q. Do you remember providing any  
25 other information, whether it was an

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 answer or a recommendation -- an answer  
3 to a question or a recommendation  
4 generally to the restructuring committee  
5 or the restructuring subcommittee with  
6 respect to ESL's go-forward plan or  
7 liquidity?  
8 MR. FRIEDMANN: Object to form.  
9 A. I can't remember specifically  
10 because I remember it being a discussion  
11 topic. So whether or not I -- where I  
12 contributed, I can't recall  
13 specifically.  
14 Q. Did you provide any advice to the  
15 restructuring committee or the  
16 restructuring subcommittee with respect  
17 to the viability of ESL's go-forward  
18 business plan?  
19 MR. FRIEDMANN: Objection to  
20 form.  
21 A. I don't recall doing so.  
22 Q. Do you recall on January 16th  
23 there being an issue with respect to one  
24 of the provisions in the proposed APA  
25 dealing with any shortfall in connection



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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 with the amount outstanding on either  
3 the ABL DIP or the Junior DIP?

4 A. When you say shortfall, can you  
5 be specific --

6 Q. Which way?

7 A. -- in terms of which way the  
8 shortfall?

9 Q. Sure. Do you recall there being  
10 an issue with respect to a provision  
11 that required -- strike that -- that  
12 indicated in the event the debtors did  
13 not have \$1.2 billion drawn on the ABL  
14 DIP and the Junior DIP, that any  
15 shortfall would accrue to the benefit of  
16 ESL?

17 A. Yes, the net benefit ultimately  
18 would accrue to the benefit of ESL, yes.

19 Q. Tell me what you remember about  
20 discussions around that issue on January  
21 16th?

22 MR. FRIEDMANN: Other than  
23 discussions you had with counsel  
24 obviously.

25 A. Sorry for the delay. I'm trying

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 to put myself exactly in the meeting  
3 when this was discussed.

4 On the business level, I remember  
5 making the argument that the net benefit  
6 of overperformance, i.e., having less  
7 debt on the company, should accrue to  
8 the benefit of the company. And I can  
9 remember making that argument and  
10 requesting that that be the case.

11 Q. And in addition to making that  
12 argument, did you also believe that is  
13 what would have been reasonable in  
14 connection with the terms of the asset  
15 purchase agreement?

16 MR. WEAVER: Objection to form.

17 A. Yes, I wouldn't characterize one  
18 individual term as reasonable in the  
19 entire context of a deal because I think  
20 you have to view the entire context of a  
21 deal. But I would have liked to have  
22 prevailed on that particular point in  
23 negotiations.

24 Q. And can you explain for me in a  
25 little more detail what that provision,

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 in terms of your understanding, again  
3 I'm not asking you to repeat what's in  
4 the APA, I'm just asking you to explain  
5 what the back and forth was with respect  
6 to that particular provision?

7 A. I can't remember the specifics.  
8 I remember requesting it at the beating  
9 the budget and having less debt on the  
10 company at the time of the close of the  
11 transaction, that that should inure to  
12 the benefit of the estate.

13 Q. And --

14 A. And --

15 Q. Sorry, go ahead.

16 A. We never won the point.

17 Q. And what was the argument on the  
18 other side? Why was it their view that  
19 that should inure to the benefit of ESL?

20 MR. WEAVER: Objection to form.

21 Q. As far as they told you?

22 A. I can't recall the specifics. I  
23 can remember the arguments going into  
24 theoretically why that was the case and  
25 also administrative challenge to trueing

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 it up.

3 I personally was dismissive of it  
4 because I wanted to win the point. And  
5 we ultimately didn't prevail.

6 Q. Was it also your understanding  
7 that in addition to any shortfall, when  
8 I say shortfall I mean any lesser amount  
9 drawn on the DIP facilities prior to  
10 close by the debtors, in addition to a  
11 dollar-dollar for credit with respect to  
12 the amount that ESL would have to pay,  
13 that there would also be a  
14 dollar-for-dollar reduction in the  
15 assumption of liabilities that ESL would  
16 assume?

17 A. Based on your question, it sounds  
18 as if you're double counting beating the  
19 budget.

20 Q. I am.

21 A. That's not my understanding of  
22 how the provision works.

23 Q. What was your understanding of  
24 how the provision works?

25 A. My understanding is that the

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 purchase price is actually the same. So  
3 we're delivering a certain amount of  
4 inventory and receivables, and there's a  
5 certain amount of capital coming into  
6 the estate on account of that.

7 However, to the extent that the  
8 amount outstanding on the ABL DIP  
9 facility is less than 8250 at that point  
10 in time, that which you referred to as  
11 shortfall, I think of it as overage  
12 because we exceeded it, that amount is  
13 an offset to other liabilities that ESL  
14 is assuming.

15 It's not the way that it happens,  
16 but if it helps visualize it, a certain  
17 amount of -- the purchase price is the  
18 purchase price. Mechanically whether it  
19 comes to us or them to pay the ABL, I'm  
20 not sure, but that amount comes in.  
21 It's an offset to liabilities is how the  
22 provision works.

23 Q. So that's your understanding of  
24 how the provision was negotiated and  
25 your understanding of what the debtors

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 agreed to?

3 A. That was my understanding of how  
4 I thought it worked at that point in  
5 time.

6 Q. And if the APA as drafted  
7 actually double counts, in your view  
8 that is simply an error?

9 A. I wouldn't say it's an error, but  
10 it certainly is inconsistent with my  
11 understanding of how it was supposed to  
12 work.

13 MR. SORKIN: Why don't we take a  
14 short break. We can go off the  
15 record.

16 (Luncheon recess at 1:09 p.m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 A F T E R N O O N S E S S I O N  
3 (1:49 p.m.)

4 BRANDON AEBERSOLD, resumed,  
5 having been previously duly sworn,  
6 was examined and testified further,  
7 as follows:

8 CONTINUED EXAMINATION  
9 BY MR. SORKIN:

10 Q. Mr. Aebersold, if you could look  
11 again at exhibit 18, I think it's the  
12 first document on the stack. If you  
13 could flip to slide 2. On slide 2, at  
14 the bottom half of the chart there's a  
15 group of assets identified as Additional  
16 Value Identified. Do you see that?

17 A. I do.

18 Q. Other than those assets  
19 identified in Additional Value  
20 Identified, are you aware of any assets  
21 that the company would have that it  
22 could either sell or use to address any  
23 liquidity shortfall postclosing?

24 MR. FRIEDMANN: Object to form.

25 A. I'm not sure and I'm probably not

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2 the right person to ask about that.

3 Q. Who would be the right person?

4 A. Either company's management or  
5 M-III.

6 Q. And you can set that aside now.

7 Do you believe that the debtors  
8 and ESL will be prepared to close on  
9 February 8th?

10 MR. WEAVER: Objection to form.

11 A. Sorry, do I believe?

12 Q. That the debtors and ESL will be  
13 in a position to close on February --  
14 strike that.

15 Do you believe that the debtors  
16 and ESL will be prepared to close on  
17 February 8th?

18 MR. FRIEDMANN: Object to form.

19 A. I have no reason to believe  
20 that's not the case.

21 Q. Are you aware of any issue,  
22 whether with respect to the debtors, ESL  
23 or some third party, that will prevent a  
24 closing from happening on February 8th?

25 MR. WEAVER: Objection to form.

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2 A. I don't believe so.

3 Q. There is no particular issue that  
4 the debtors' advisors are trying to  
5 resolve that causes you any significant  
6 concern that it won't be resolved in  
7 advance of February 8th?

8 A. Not of which I'm aware.

9 Q. If you could for a moment -- well  
10 let me ask it without the APA and if we  
11 need to look at the APA we can do that.

12 Are you aware that there is a  
13 provision in the APA that provides for a  
14 marketing period for ESL's lenders?

15 A. I am.

16 Q. Do you know what the current  
17 status is of that marketing period? In  
18 other words, will that period be  
19 completed prior to February 8th?

20 A. My understanding is that it is  
21 scheduled to be completed before  
22 February 8th.

23 Q. In the event that it is not  
24 completed before February 8th, are you  
25 aware of that that is a closing

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2 condition and would provide ESL the  
3 opportunity to walk away and not close?

4 MR. WEAVER: Objection to form.

5 A. Well, I don't think they have the  
6 ability to walk away from the  
7 transaction. I believe it would  
8 potentially delay closing. I do  
9 understand that it's a closing  
10 condition.

11 Q. But your understanding is, as far  
12 as you're aware, it's on target to be  
13 complete by February 8th?

14 A. That's what I've been told.

15 Q. Are you also aware that one of  
16 the closing conditions in the APA is  
17 that sellers, so the debtors, will have  
18 caused KCD IP, the entity that holds the  
19 KCD intellectual property rights, to  
20 grant a license, or that in some other  
21 way a license will be granted, to Newco  
22 with respect to KCD?

23 A. Yes, I'm aware.

24 Q. Are you involved in any way in  
25 actually effectuating the license from

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2 being transferred or provided?

3 A. No.

4 Q. Do you know how the debtors  
5 intend to cause the nondebtor KCD to  
6 transfer the license, or provide a  
7 license, excuse me?

8 MR. FRIEDMANN: I want to caution  
9 the witness in responding to this  
10 question not to reveal any knowledge  
11 you have about how debtors may intend  
12 to accomplish this that is informed  
13 by discussions with counsel. You can  
14 otherwise, if it's an understanding  
15 you have outside of that, you can  
16 answer.

17 A. I do have an understanding but  
18 it's based almost exclusively from input  
19 from counsel.

20 Q. Okay. Do you know whether there  
21 are ongoing negotiations with the PBGC  
22 with respect to that issue?

23 MR. FRIEDMANN: Same instruction  
24 in terms of what you know about  
25 negotiations with PBGC and if they

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2 are informed by counsel versus what  
3 you happen to know outside of talking  
4 to counsel.

5 Q. Let me ask it differently. Are  
6 you personally involved in any  
7 negotiations with the PBGC or its  
8 representatives with respect to the  
9 transfer or provision of a license to  
10 Newco?

11 A. Today I am sitting in this room.  
12 I have been engaged with the PBGC in  
13 terms of conversations dating back  
14 prepetition and continue to be in  
15 dialogue with them. But a negotiation  
16 is a worthwhile endeavor.

17 Q. At this point there is no  
18 resolution to any negotiations with the  
19 PBGC with respect to any issues  
20 associated with the intellectual  
21 property rights held by KCD, correct, in  
22 connection with the APA?

23 A. Well, take that apart. You said  
24 there's no resolution. I believe, at  
25 least from the advice of counsel, I

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2 believe the APA is actionable on its own  
3 right. Whether or not there could be  
4 supplemental negotiations, I'm not aware  
5 of any settlement that has occurred with  
6 respect to the issue the PBGC may have.  
7 Q. Has ESL, as far as you are aware  
8 at this point, indicated that they are  
9 prepared to waive any of the closing  
10 conditions?  
11 A. Have they indicated if they are  
12 prepared to waive them?  
13 Q. Correct.  
14 A. Not that I'm aware, but we're  
15 also not at the closing table.  
16 Q. Have the debtors asked, as far as  
17 you're aware, ESL to waive any of the  
18 closing conditions at this point?  
19 A. Not that I'm aware.  
20 Q. Do you know whether or not the  
21 provision of, and again separate from  
22 any information you have from counsel,  
23 do you know whether or not the provision  
24 of a license from KCD to Newco requires  
25 the consent of the PBGC?

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2 were, with respect to that lease  
3 designation provision?  
4 MR. FRIEDMANN: Object to form.  
5 A. Generally, that they'd have some  
6 period of time to determine which leases  
7 they wanted to designate to a third  
8 party, and they were given a 60-day  
9 window to do so, or some period of time.  
10 I think you said it was 60 days.  
11 Q. What was your understanding of  
12 the reason for that additional time  
13 postclose to determine whether or not to  
14 designate leases?  
15 A. I think from their perspective --  
16 well that's conjecture. I don't know.  
17 They never specified.  
18 Q. I'm asking not what you're -- I  
19 don't want to know what you're  
20 speculating. I want to know what you  
21 were told, if anything, as to why that  
22 provision was being negotiated?  
23 A. I wasn't told anything  
24 specifically.  
25 Q. Okay. What did the -- did the

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1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 A. That is going to be exclusively  
3 based on input from counsel.  
4 Q. Mr. Aebersold, were you involved  
5 in any way in the negotiations with  
6 respect to ESL's ability to credit bid  
7 its debt?  
8 A. I was not.  
9 Q. That was something that was  
10 handled by the restructuring  
11 subcommittee's advisors?  
12 A. Correct.  
13 Q. Are you familiar with a provision  
14 in the APA that allows ESL the ability,  
15 over a period of 60 days postclose, to  
16 designate leases for assignment to third  
17 parties?  
18 A. Generally, yes.  
19 Q. Can you tell me about what your  
20 understanding was of the agreement with  
21 respect to that provision? Again, I'm  
22 not asking you about the specific  
23 provisions in the APA. I just want to  
24 understand the kind of negotiations you  
25 were involved in, to the extent you

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2 debtors push back on that provision at  
3 all?  
4 A. I can't recall specifically.  
5 Q. Do you know in terms of the  
6 negotiations what your understanding --  
7 strike that.  
8 What was your understanding of who  
9 would benefit from any upside of an  
10 assignment of the lease postclose,  
11 whether it would be debtors or ESL?  
12 MR. FRIEDMANN: Object to form.  
13 A. Generally, my understanding would  
14 be that the benefit would accrue to ESL.  
15 Q. And was there any negotiation  
16 you're aware of that the debtors  
17 insisted on obtaining part of that  
18 upside or that potential upside?  
19 A. I can't remember specifically. I  
20 can recall that any sharing of upside,  
21 every point was fairly heavily  
22 negotiated.  
23 Q. Do you remember any discussion or  
24 negotiation around the number of days  
25 postclose that the designation period

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2 would last?  
3 A. Not specifically. I do remember  
4 a discussion between counsel on the  
5 point, but I wasn't directly involved in  
6 that point.  
7 Q. Do you remember whether, from the  
8 debtors' perspective, they tried to  
9 negotiate a shorter time period than 60  
10 days?  
11 A. I can't remember specifically,  
12 but I would assume that would be the  
13 position the company would take.  
14 (Exhibit 23, Court Filing was  
15 marked for identification.)  
16 Q. Mr. Aebersold, I've handed you  
17 what's been marked as exhibit 23. I'll  
18 represent to you that it's a filing, a  
19 court filing. And what I want to direct  
20 you to is the attachment that includes  
21 the Lazard engagement letter, it's  
22 exhibit 1. It is page 28 of 58 if you  
23 look at the top marking from the court  
24 docket.  
25 A. Okay.

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2 was unknown what sales efforts would  
3 need to be undertaken, and to minimize  
4 the risk that under section 2 we are  
5 agreeing to fees in which ultimately we  
6 would be running a number of M&A sales  
7 processes in addition to all the other  
8 items listed in section 1, that section  
9 2, in the event we were running a number  
10 of sales processes, section 2 wouldn't  
11 have compensated us for those  
12 activities.  
13 Q. Okay. You mentioned it's a  
14 reciprocal provision. What does that  
15 mean?  
16 A. Well, the company also needs us,  
17 would need to ask us to do so. So we  
18 weren't -- we weren't bound to run any  
19 and all sale processes. But at the same  
20 time, they weren't bound to use Lazard  
21 for any and all sale processes.  
22 Q. And the letter in exhibit --  
23 excuse me -- the engagement letter in  
24 exhibit 23 between Lazard and Sears is  
25 dated as of October 11, 2018, correct?

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2 Q. If you could take just a minute  
3 to review the engagement letter and tell  
4 me whether you recognize it?  
5 A. I do.  
6 Q. Is this Lazard's engagement  
7 letter that was entered into just prior  
8 to or in early October of 2018?  
9 A. Yes.  
10 Q. If you look at the description of  
11 services, if you could just scan those  
12 and I'm going to ask you about 1 (k).  
13 A. Okay.  
14 Q. Can you explain to me why in 1  
15 (k) there is a condition to that  
16 particular task that says "Subject to  
17 Lazard's agreement so to act," whereas  
18 the rest are simply describing acts that  
19 Lazard is prepared to engage in?  
20 A. I can. I think at the outset  
21 it's important to note that it's a  
22 reciprocal provision. But the reason  
23 that the subject to Lazard's agreement  
24 so to act was based on this fee  
25 structure as outlined in section 2, it

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2 A. You're asking me if the date is  
3 as of?  
4 Q. Yes.  
5 A. Yes.  
6 Q. As of October 11th, what was your  
7 understanding of the sales processes  
8 that Lazard would be engaged in, if any?  
9 A. We weren't certain.  
10 Q. Do you know if the company, based  
11 on the information provided to you, was  
12 planning to engage in any sales process  
13 as of October 11, 2018?  
14 A. Not definitively in which -- and  
15 what I mean by that is Lazard had not  
16 been asked to run a sales process by the  
17 restructuring committee as of October  
18 11.  
19 Q. Based on the information provided  
20 you, do you know if any advisor had been  
21 asked to run a sales process by the  
22 restructuring committee as of October  
23 11, 2018?  
24 A. Well the restructuring committee  
25 didn't exist before around that date,

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2 and so presumably not. That being said,  
3 as of October 11th there actually were  
4 ongoing sales processes.

5 Q. What were the ongoing sales  
6 processes as of October 11, 2018?

7 A. If I'm not mistaken, the company  
8 was endeavoring to sell Sears Home  
9 Services as well as Parts Direct as a  
10 component of that.

11 I do not believe there was a  
12 process for the franchise business 1 to  
13 5 that I mentioned previously. I  
14 actually don't believe that there was.

15 And I can't comment on the status  
16 of where those were at this point in  
17 time, but there was M&A activity as of  
18 this date.

19 Q. The M&A activity you're referring  
20 to, who was primarily responsible for  
21 running that activity when you first got  
22 involved in October of 2018?

23 A. With respect to the warranty and  
24 repair business as components of Sears  
25 Home Services, that was being conducted

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2 by the company. They had an informal  
3 process with three potential bidders in  
4 that process. And then with respect to  
5 Parts Direct, another investment bank  
6 was running that process. I believe  
7 that process had started either the late  
8 spring or early summer of that year. So  
9 it was toward the tail end of that  
10 process.

11 And I'm not exactly sure with  
12 respect to SHIP. I believe that was  
13 also a process being run by an  
14 investment bank.

15 Q. With respect to the Parts Direct  
16 process, was that Centerview that was  
17 running that?

18 A. Yes, it was.

19 Q. With respect to SHIP, was that  
20 also Centerview or was that someone  
21 else?

22 A. I can't be certain but I believe  
23 that it was.

24 Q. At what point were you first  
25 asked by the company to oversee any

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2 sales process?

3 A. I can't remember exactly.

4 Q. Was it in October?

5 A. I'm distinguishing between a  
6 formal request and what we were engaged  
7 in. You can imagine in reviewing  
8 strategic alternatives for the company,  
9 are we're evaluating sales alternatives,  
10 restructurings, recapitalizations, an  
11 early winddown. We are evaluating a  
12 lot.

13 We certainly were looking into a  
14 sale of the entire company and a sale of  
15 its component parts. Whether or not the  
16 company was mandated to do so as of  
17 whatever date, I can't be specific.

18 Q. And my question is not formally.  
19 Even informally, when were you first  
20 asked to oversee any sort of sales  
21 process by the company?

22 MR. FRIEDMANN: Object to form.

23 A. I think our involvement was  
24 implied that we would assist fairly  
25 early on. I can't remember when the

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2 formal request came from the  
3 restructuring committee.

4 Q. When did you first start having  
5 discussions with the company about your  
6 agreement to provide the services  
7 included in 1 (k) in your engagement  
8 letter that is exhibit 23?

9 A. I can't remember exactly. I will  
10 say in terms of background, there was a  
11 lot of overlap between what would be an  
12 M&A process for assets, and the  
13 processes to raise capital, i.e., the  
14 DIP financing process.

15 And so, from the very beginning,  
16 we were populating data rooms, updating  
17 information memorandums, for a financing  
18 process which, if you were to draw a  
19 Venn diagram between raising junior  
20 capital for this company and running a  
21 marketing process, there's a tremendous  
22 amount of overlap.

23 So the exact moment where there  
24 was a quest not just to fully understand  
25 it so we could evaluate sales

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2 alternatives as a potential option for  
3 the company as well as raising DIP  
4 financing on the back of a number of  
5 these assets, to when it was a formal  
6 request of will you run this process for  
7 us, I can't be certain.

8 Q. Was it before December?

9 A. Certainly before December.

10 (Exhibit 24, set of minutes of  
11 the restructuring committee from  
12 January 6, 2019 was marked for  
13 identification.)

14 Q. Mr. Aebersold, the court reporter  
15 has just handed you what's been marked  
16 as UCC Exhibit 24. Exhibit 24 is a set  
17 of minutes of the restructuring  
18 committee from January 6, 2019. If you  
19 could take just a minute to review as  
20 much as you want. I'm going to ask you  
21 a specific question from this but feel  
22 free to take a minute to review the  
23 document.

24 A. Could you tell me what day of the  
25 week January 6th was?

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2 Q. I can tell you in just a minute.

3 It's a Sunday.

4 A. It's a Sunday?

5 Q. It's a Sunday.

6 A. Okay. That's helpful. Thanks.

7 Q. Okay. To the extent it helps, I  
8 believe that in terms of the timeline of  
9 the case, December 28th with the  
10 deadline for definitive bids, I think

11 January 4th was the deadline to  
12 designate qualified bidders, if I  
13 remember that correctly. And as you  
14 asked, January 6 was a Sunday. So if  
15 that's helpful to give some context.

16 A. Is it okay if I look at a  
17 calendar quickly just in terms of days?

18 Q. Sure.

19 A. Okay. Thanks.

20 Q. The minutes here were from  
21 January 6th at 12:30 p.m. and what I  
22 want to ask about is the last paragraph  
23 on the first page of exhibit 24.

24 A. Okay.

25 Q. That paragraph states that "The

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2 committee and its advisors discussed the  
3 concept of a backstop by ESL to allocate  
4 the risk that the unencumbered assets do  
5 not generate for the company the amount  
6 projected."

7 Can you tell me what you recall  
8 about the concept of a backstop by ESL  
9 to address potential shortfalls with  
10 respect to administrative solvency?

11 A. Sure. I think the notion was  
12 that, based on our calculations, the bid  
13 as of January 6th, and where the ESL bid  
14 stood at that time, when analyzed,  
15 showed that the shortfall, similar to  
16 the calculation that we showed in that  
17 prior presentation which I think value  
18 required may have been the line, I think  
19 at this point in time what this is  
20 referring to is that was the shortfall  
21 at that period of time.

22 However, under the ESL bid as of  
23 January 6th, the bid included less  
24 assets.

25 So from our perspective, although

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2 the shortfall was greater, there were  
3 more assets to try to meet those  
4 obligations.

5 The idea of a backstop was to say  
6 if for some reason those assets weren't  
7 sufficient to cover that amount, the  
8 request was that ESL be required to make  
9 up that shortfall.

10 Q. As of January 6, I believe the  
11 operative bid was the bid that had been  
12 submitted by the December 28th bid  
13 deadline. And as you indicate, that bid  
14 did not seek to acquire as many assets  
15 as the bid currently in front of the  
16 court, correct?

17 MR. FRIEDMANN: Object to form.

18 A. That sounds right. Whether or  
19 not the only bid at that point in time  
20 was the December 28th and if there had  
21 been updates and discussions I'm not  
22 sure of, but what you're saying is  
23 generally the case.

24 Q. Okay. What was ESL's response to  
25 the idea of a backstop?

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2 MR. WEAVER: Objection to form.

3 MR. SORKIN: Actually, like that.

4 Q. Do you know whether or not the  
5 debtors proposed to ESL that they  
6 backstop any risk of a shortfall with  
7 respect to administrative solvency at  
8 any point?

9 A. I believe we did.

10 Q. Do you know what ESL's response  
11 was?

12 MR. WEAVER: Objection to the  
13 form.

14 A. Not specifically.

15 Q. Do you know generally?

16 A. They did not agree to do so,  
17 generally speaking.

18 Q. Do you know whether, in  
19 connection with the auction, the debtors  
20 made a request of ESL to backstop any of  
21 the potential administrative shortfall,  
22 administrative claimed shortfall?

23 A. Yes. And I pause because to  
24 delineate between the weekend before the  
25 auction and the actual auction is

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2 challenging for me.

3 Q. Understood.

4 A. Because we were at Weil's offices  
5 the entire time. I recall that request  
6 during that period of time. Whether or  
7 not it was after the formal start of the  
8 auction, I think that it was but I can't  
9 be certain.

10 Q. And other than the fact that the  
11 proposed APA in front of the court does  
12 not contain any backstop, do you know  
13 what ESL's response was to that request?

14 MR. WEAVER: Objection to the  
15 form.

16 A. As I recall, we did not prevail  
17 on that point.

18 Q. Other than ESL ultimately not  
19 agreeing to that, do you remember  
20 anything about the discussions back and  
21 forth with respect to that concept,  
22 again, at or around the time of the  
23 auction?

24 A. Not specifically. I can remember  
25 conversations and discussions about the

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2 point. But it was part of broader  
3 negotiations and I can't remember the  
4 particulars.

5 Q. In exhibit 24 the next sentence  
6 from where we were reading states "Mr.  
7 Meghji stated that the value of \$335  
8 million ascribed to the unencumbered  
9 assets is not unreasonable."

10 Do you know at this time which  
11 unencumbered assets those were?

12 A. Not specifically. I do recall  
13 that those assets included some real  
14 estate somewhat referred to as  
15 unencumbered accounts receivable and a  
16 few other items, but I can't recall  
17 specifically.

18 Q. And do you know whether those  
19 items ultimately were included in the  
20 ESL bid that is currently before the  
21 court?

22 A. I can't be sure in terms of there  
23 were a number of items in there. There  
24 are some items that have been left with  
25 the estate, the degree to which I can't

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2 comment on.

3 Q. But you don't know sitting here  
4 today which items have been left with  
5 the estate?

6 A. I know the two that I mentioned  
7 in the previous answer, those are not  
8 being left with the estate.

9 Q. The real estate and the accounts  
10 receivable?

11 A. The bulk of. There are some that  
12 are being left behind. But the bulk are  
13 being taken as part of the bid.

14 Q. The next sentence states that  
15 "The committee discussed that  
16 successfully monetizing the unencumbered  
17 assets would likely require some time  
18 and numerous separate transactions."

19 Do you recall any specific  
20 discussion?

21 A. Not the specifics. I do remember  
22 in the two items I mentioned before in  
23 terms of these parcels of real estate  
24 and accounts receivable, that that would  
25 likely be sold or dealt with piecemeal



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2 and that could require an uncertain  
3 amount of time to monetize it.

4 Q. Do you remember whether there was  
5 any particular amount of time discussed?

6 A. Not specifically, but it was  
7 different based on the type of  
8 underlying asset.

9 Q. With respect to the real estate,  
10 do you remember any specific amount of  
11 time being discussed?

12 A. I can remember a view that that  
13 would be a long-term process for certain  
14 of those assets and could be in excess  
15 of a year.

16 Q. With respect to the accounts  
17 receivable, do you remember any specific  
18 discussion of the amount of time?

19 A. Not with respect to the amount of  
20 time.

21 Q. With respect to the real estate,  
22 were there -- sitting here now, do you  
23 remember the value that was ascribed of  
24 that \$335 million to unencumbered real  
25 estate?

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2 not a particular value of the  
3 unencumbered assets; is that correct?

4 A. Yes. I mean this is based on my  
5 recollection of what was a fairly  
6 lengthy discussion at the time. That's  
7 the case.

8 And ultimately the value of those  
9 assets, the restructuring committee and  
10 the advisors, collectively, didn't view  
11 that as a reasonable risk. We were --  
12 there was too much uncertainty whether  
13 or not we could use those assets to  
14 cover that amount.

15 And specifically and the reason I  
16 mentioned it before on the accounts  
17 receivable, is that the value of those  
18 accounts receivable in the debtors'  
19 hands after a transaction, there was a  
20 tremendous amount of skepticism about  
21 that value. Collecting on a vendor  
22 credit when you're no longer a customer,  
23 could be challenging.

24 Q. So is it the case that to the  
25 extent there are accounts receivable

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2 A. Just to be clear, the 335, was  
3 the shortfall if I'm not mistaken.

4 Breaking down his sentence, Mr. Meghji  
5 stated that the value of 335 million  
6 ascribed to the unencumbered assets is  
7 not unreasonable.

8 The reason that that was the  
9 question before him is the shortfall was  
10 335 and there's this pool of assets,  
11 could you cover the 335 with this  
12 particular pool of assets. And I think  
13 his response, and again this is a bit of  
14 conjecture, I believe what he's  
15 responding to is to be able to deliver  
16 \$335 million from those unencumbered  
17 assets is not unreasonable.

18 Q. Okay. And I think you sort of  
19 anticipated my next question which was,  
20 are you aware of any report or  
21 indication that assigns that \$335  
22 million of value to the unencumbered  
23 assets? But I now understand what  
24 you're saying is you believe that 335  
25 million is really the shortfall, it's

1 AEBERSOLD - HIGHLY CONFIDENTIAL  
2 that remain with the debtors, realizing  
3 values on that is much more difficult  
4 postclose than it is preclose? No, I  
5 said it the other way around. Strike  
6 that.

7 A. Either way, I'm going to  
8 disagree. I don't think it has as much  
9 to do with trying to do it preclose  
10 versus postclose as collecting on the  
11 receivable when you're no longer a  
12 counterparty.

13 For example, a vendor credit,  
14 going to collect on a vendor credit,  
15 while you're in bankruptcy not so easy  
16 to do, and postclosing not so easy to  
17 do, particularly when you're not the  
18 ongoing business.

19 MR. SORKIN: Why don't we take a  
20 short break. I think I have very  
21 little left.

22 (A recess was had.)

23 MR. SORKIN: Thank you, Mr.  
24 Aebersold. I don't have any further  
25 questions.

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<p>1 AEBERSOLD - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: Thank you.</p> <p>3 MR. FRIEDMANN: Thank you.</p> <p>4 (Time noted:2:39 p.m.)</p> <p>5 _____</p> <p>6 BRANDON AEBERSOLD</p> <p>7</p> <p>8 _____</p> <p>9 Subscribed and sworn to</p> <p>10 before me this _____</p> <p>11 day of _____, 2018.</p> <p>12</p> <p>13 _____</p> <p>14 Notary Public</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2</p> <p>3</p> <p>4 E X H I B I T S</p> <p>5 NUMBER DESCRIPTION PAGE</p> <p>6 EXHIBIT 22 Bates stamp 31</p> <p>7 SEARS UCC00413809</p> <p>8 EXHIBIT 23 Court Filing 170</p> <p>9 EXHIBIT 24 Set of minutes of the 178</p> <p>10 restructuring committee</p> <p>11 from January 6, 2019</p> <p>12</p> <p>13</p> <p>14 PREVIOUSLY MARKED EXHIBITS</p> <p>15 EXHIBIT 40 (Exhibit 40, previously 8</p> <p>16 marked and shown to</p> <p>17 witness.)</p> <p>18 EXHIBIT 2 (Exhibit 2, previously 18</p> <p>19 marked and shown to</p> <p>20 witness.)</p> <p>21 EXHIBIT 49 (Exhibit 49, previously 75</p> <p>22 marked and shown to</p> <p>23 witness.)</p> <p>24 EXHIBIT 14 (Exhibit 14, previously 91</p> <p>25 marked and shown to</p>
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<p>1</p> <p>2 witness.)</p> <p>3 EXHIBIT 18 (Exhibit 18, previously 134</p> <p>4 marked and shown to</p> <p>5 witness.)</p> <p>6 I N D E X</p> <p>7</p> <p>8</p> <p>9 WITNESS EXAMINATION BY PAGE</p> <p>10 AEBERSOLD SORKIN 7</p> <p>11</p> <p>12</p> <p>13 REQUESTS</p> <p>14 Page Line</p> <p>15</p> <p>16 NONE</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 CERTIFICATION</p> <p>3 STATE OF NEW YORK )</p> <p>4 : ss.</p> <p>5 COUNTY OF NEW YORK )</p> <p>6 I, MARK RICHMAN, Certified Shorthand</p> <p>7 Reporter, Registered Professional Reporter</p> <p>8 and Notary Public for and within the State</p> <p>9 of New York, do hereby certify:</p> <p>10 That the witness whose testimony is</p> <p>11 herein set forth, was duly sworn by me;</p> <p>12 and that the within transcript is a true</p> <p>13 record of the testimony given by said</p> <p>14 witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this</p> <p>17 action by blood or marriage, and that I am</p> <p>18 in no way interested in the outcome of</p> <p>19 this matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto</p> <p>21 set my hand this 31st day of January,</p> <p>22 2019.</p> <p>23</p> <p>24 _____</p> <p>25 MARK RICHMAN, CSR, RPR, CM</p> <p style="text-align: center;">* * *</p>

ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg.	No.	Now Reads	Should Read	Reason
_____	_____	_____	_____	_____
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\_\_\_\_\_  
Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
(Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

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